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# Irish Collective Asset-management Vehicles Act 2015



*Number 2 of 2015*

## IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

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Companies Act 2014 (No. 38)

Courts of Justice Act 1924 (No. 10)

Netting of Financial Contracts Act 1995 (No. 25)

Partnership Act 1890 (53 & 54 Vict., c. 39)

Registration of Deeds and Title Act 2006 (No. 12)

Registration of Title Act 1964 (No. 16)

State Property Act 1954 (No. 25)

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*Number 2 of 2015*

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## IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

An Act to make provision for the creation, operation and regulation of bodies corporate to be known as Irish Collective Asset-management Vehicles and to provide for related matters.

[4 *th* March, 2015]

Be it enacted by the Oireachtas as follows:

### PART 1

#### Preliminary and General

#### Chapter 1

#### *Preliminary*

#### Short title and commencement

- (1) This Act may be cited as the Irish Collective Asset-management Vehicles Act 2015.
- (2) 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.
- (3) In relation to times before the coming into operation of the Companies Act 2014 references in this Act to any provision of that Act have effect as references to the corresponding provisions of any enactment to be repealed by that Act.

#### Definitions

#### 2. In this Act—

“AIFM Regulations” means the European Union (Alternative Investment Fund Managers) Regulations 2013 ( S.I. No. 257 of 2013 );

“annual general meeting” has the meaning given by section 89 (1);

“Audits Regulations” means the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 ( S.I. No. 220 of 2010 );

“authorised ICAV” means an ICAV in respect of which a relevant authorisation is in operation;

“Bank” means the Central Bank of Ireland;

“Bank regulations” means regulations made by the Bank under Part 8 of the Central Bank (Supervision and Enforcement) Act 2013 ;

“category 1 offence” means an offence the penalties for which are specified in section 186 (1);

“category 2 offence” means an offence the penalties for which are specified in section 186 (2);

“category 3 offence” means an offence the penalties for which are specified in section 186 (3);

“Community act” means an act adopted by an institution of the European Union;

“company” means a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act;

“debenture” includes debenture stock, bonds and any other securities of an ICAV whether constituting a charge on the assets of the ICAV or not;

“depository” means a depository within the meaning of Regulation 22(3) of the AIFM Regulations;

“disqualification order” has the same meaning as in the enactments specified in section 87 as applied in relation to an ICAV by that section;

“enactment” includes an instrument under an enactment;

“financial services legislation” has the meaning given by section 3 of the Central Bank (Supervision and Enforcement) Act 2013 ;

“group” means a holding company and its subsidiaries;

“holding company” has the meaning given by section 8 of the Companies Act 2014 ;

“ICAV” means an Irish collective asset-management vehicle;

“information” includes information contained in a document;

“instrument of incorporation” shall be read in accordance with section 6 ;

“investment company” has the same meaning as in Part 24 of the Companies Act 2014 ;

“Irish collective asset-management vehicle” means a body registered as such under this Act;

“management company”, in relation to an ICAV, means a company designated by the ICAV to undertake the management of the ICAV;

“member”, in relation to an ICAV, means a shareholder in the ICAV;

“Minister” means the Minister for Finance;

“officer”, in relation to an ICAV, includes a director or secretary;

“ordinary resolution”, in relation to an ICAV, means a resolution passed by a simple majority of the votes cast by the members of the ICAV as, being entitled to do so, vote in person or by proxy at a general meeting of the ICAV;

“register of ICAVs” means the register kept by the Bank under section 14;

“register of members”, in relation to an ICAV, means the register of members kept by it under section 49;

“Registrar” means Registrar of Companies;

“registration order” shall be read in accordance with section 12;

“relevant authorisation” means an authorisation under—

(a) section 19, or

(b) the UCITS Regulations;

“shadow director”, in relation to an ICAV, means a person in accordance with whose directions or instructions the directors of the ICAV are accustomed to act except a person in accordance with whose directions or instructions the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity;

“special resolution”, in relation to an ICAV, means a resolution passed by not less than 75 per cent of the votes cast by the members of the ICAV as, being entitled to do so, vote in person or by proxy at a general meeting of the ICAV;

“sub-fund” means a portfolio of assets and liabilities maintained by an ICAV in accordance with its instrument of incorporation;

“subsidiary” has the meaning given by section 7 of the Companies Act 2014;

“UCITS Regulations” means the European Communities (Undertakings for Investment in Transferable Securities) Regulations 2011 ( S.I. No. 352 of 2011 );

“umbrella fund” means an ICAV which has one or more sub-funds;

“undischarged bankrupt” means a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction.

### **Power to make regulations**

**3.** (1) The Minister may make regulations—

(a) for the general purpose of this Act or for any particular purpose of this Act, and

(b) in relation to any matter referred to as the subject of regulations.

(2) Regulations under this Act may apply either generally or by reference to a specified class or classes of ICAV, or to a specified time or times, or during a specified period or periods or by reference to any other matter as the Minister may consider appropriate.

(3) Without prejudice to any specific provision of this Act, any regulations under this Act may contain such incidental, consequential, transitional or supplementary provisions as may appear to the Minister to be necessary or proper for any purpose of this Act or in consequence of, or to give full effect to, any provision of this Act.

### **Expenses**

**4.** The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

## Chapter 2

### *Creation of ICAVs and carrying on of business*

#### **Creation of ICAV with limited liability**

**5.** (1) This Act enables by means of—

(a) the furnishing of an instrument of incorporation, and certain other information, to the Bank,  
and

(b) compliance with the other requirements imposed by or under this Act or any other enactment,

a body corporate, of a type to be known as an Irish collective asset-management vehicle, to be formed and registered and, subject to its obtaining the relevant authorisation, to carry on business as an authorised ICAV.

(2) The sole object of an ICAV shall be the collective investment of its funds in property and giving members the benefit of the results of the management of its funds.

(3) The liability of the members of an ICAV shall be limited to the amount, if any, unpaid on the shares respectively held by them.

(4) *Subsection (3)* is without prejudice to any other liability to which a member may be subject as provided by or under this Act.

### **Instrument of incorporation**

6. (1) Any 2 or more persons, associated for any lawful purpose, may prepare or cause to be prepared an instrument to be known as an instrument of incorporation in respect of a proposed ICAV.

(2) Following the instrument's preparation, the persons referred to in *subsection (1)* shall subscribe their names to the instrument of incorporation.

(3) The instrument of incorporation shall provide that—

(a) the sole object of the ICAV is the collective investment of its funds in property and giving members the benefit of the results of the management of its funds,

(b) the actual value of the paid-up share capital of the ICAV shall be at all times equal to the value of the assets of the ICAV after deduction of its liabilities,

(c) the shares of the ICAV shall, at the request of any of the shareholders, be purchased by the ICAV directly or indirectly out of the ICAV assets unless and to the extent as may be approved by the Bank and subject to such requirements as may be imposed by the Bank under this Act or any other enactment,

(d) the share capital of the ICAV shall be equal to the value for the time being of the issued share capital of the ICAV, and

(e) share capital is to be divided into a specified number of shares without assigning any nominal value to them.

(4) The Bank may specify additional matters that are to be provided for in the instrument of incorporation.

(5) In the case of a failure to comply with *subsection (3)* the persons who subscribed their names to the instrument of incorporation each commit a category 2 offence.

### Registered office and head office

7. (1) An ICAV shall, at all times, have a registered office in the State to which all communications and notices may be addressed.

(2) An ICAV shall give notice in writing of any change in the situation of the registered office or head office of the ICAV, within 14 days after the date of the change, to the Bank which shall record that change.

(3) If an ICAV fails to comply with *subsection (1)*, the ICAV and any officer of it who is in default commits a category 2 offence.

(4) If an ICAV fails to comply with *subsection (2)*, the ICAV and any officer of it who is in default commits a category 3 offence.

### Carrying on of business

8. (1) No business shall be carried on by an ICAV that is not an authorised ICAV.

(2) The business carried on by an authorised ICAV shall be confined to activities permitted to be carried on by—

(a) in the case of an ICAV authorised under *section 19*, this Act and, where applicable, the AIFM Regulations, or

(b) in the case of an ICAV authorised under the UCITS Regulations, those Regulations.

(3) If an ICAV fails to comply with *subsection (1)* or *(2)*, the ICAV and any officer of it who is in default commits a category 1 offence.

## PART 2

### Registration and Authorisation of ICAVs etc.

#### Chapter 1

#### *Registration*

#### **Registration order**

9. (1) This Chapter enables the Bank to make a registration order in respect of an ICAV.

(2) A registration order operates to effect the incorporation of the ICAV under section 15.

#### **Application for registration order**

10. (1) To obtain a registration order in respect of a proposed ICAV an application shall be made to the Bank.

(2) The application shall—

(a) be made in writing in such manner and form as may be specified by the Bank,

(b) contain—

(i) the instrument of incorporation (subscribed to as mentioned in section 6 (2)) in respect of the ICAV, and

(ii) a statement that complies with section 11,

and

(c) contain or be accompanied by such other information as the Bank may specify for the purpose of determining the application.

(3) At any time after receiving an application and before determining it the Bank may by notice in writing require the person who made the application to provide additional information to it.

(4) Different requirements may be specified by the Bank for the purposes of *subsection (2)(a)* and *(c)* in relation to different classes of applications.

- (5) The Bank may specify that information provided to it in compliance with *subsection (1) or (2)* be certified or attested as to its authenticity or correctness in such manner as the Bank may specify, including by statutory declaration.
- (6) A person commits a category 2 offence if—
- (a) for the purposes of or in connection with any application under this section, or
  - (b) in purported compliance with any requirement imposed on the person by or under this section,
- the person provides information that is false or misleading in a material particular, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading.

**Contents of statement required by *section 10 (2)(b)(ii)***

11. (1) A statement complies with this section if the following conditions are met.
- (2) The first condition is that the statement is in writing and contains the name and the particulars specified in *subsection (3)* in relation to—
- (a) the persons who are to be the first directors of the ICAV,
  - (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the ICAV, and
  - (c) the situation of the ICAV's head office and registered office.
- (3) The particulars referred to in *subsection (2)* are—
- (a) in relation to a person named as a director of the ICAV—
    - (i) all particulars which are, in relation to a director, required pursuant to *subsection (2)* of *section 65* to be contained in the register kept under that section, and
    - (ii) if the person is disqualified under the law of a country or territory other than the State (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking, the particulars which are required by *section 66 (1)* to be stated in a notification under *section 65 (6)*,
- and

- (b) in relation to a person named as secretary, or as one of the joint secretaries, all particulars which are, in relation to the secretary or each joint secretary, required pursuant to *subsection (4) of [section 65](#)* to be contained in the register kept under that section.
- (4) The second condition is that the statement is signed by or on behalf of the subscribers to the instrument of incorporation and is accompanied by a consent signed by each of the persons named in the statement as a director, secretary or joint secretary to act in that capacity.
- (5) The third condition is that where the application for the making of a registration order is made by a person as agent for the subscribers to the instrument of incorporation the statement so specifies and gives the name and address of the agent.
- (6) The persons who are specified in the statement as the directors, secretary or joint secretaries of the ICAV shall, on the incorporation of the ICAV, be deemed to have been appointed as the first directors, secretary or joint secretaries of the ICAV, and any indication in the instrument of incorporation, as delivered to the Bank under this Part, specifying a person as a director, secretary or joint secretary of an ICAV shall be void unless such person is specified as a director, secretary or joint secretary in the statement.

### **Making of registration order**

- 12.** (1) On an application being made to it under [section 10](#), the Bank shall make a registration order in respect of an ICAV if—
- (a) it is satisfied that—
- (i) the application complies with that section,
- (ii) the ICAV will, on the coming into operation of the order, comply with [section 13](#),
- (iii) the ICAV will, at that time, comply with any requirements imposed by or under this Act or any other enactment in relation to applications for a registration order, and
- (iv) the fee (if any) prescribed under section 32E of the [Central Bank Act 1942](#) for the purposes of this subsection has been paid,
- and

(b) it has been provided with a certificate signed by a practising solicitor to the effect that the instrument of incorporation included in the application complies with this Act and any requirements imposed by or under this Act or any other enactment in relation to the contents of instruments of incorporation.

(2) If the Bank makes a registration order under *subsection (1)*, it shall give written notice of the registration order to the applicant.

(3) The registration order shall specify the date on which it shall come into operation.

### **Requirements referred to in section 12 (1)(a)(ii)**

**13.** (1) An ICAV complies with this section if the following conditions are met.

(2) The first condition is that the ICAV and its instrument of incorporation comply with the requirements of this Act and any requirements imposed by or under this Act or any other enactment.

(3) The second condition is that the registered office and head office of the ICAV are situated in the State.

(4) The third condition is that the ICAV has at least 2 directors.

(5) The fourth condition is that the name of the ICAV complies with section 29.

### **Registration of certain matters following making of registration order**

**14.** (1) On making a registration order in respect of an ICAV, the Bank shall, in a register kept by it for the purpose, enter the following:

(a) a copy of the registration order;

(b) the instrument of incorporation of the ICAV;

(c) particulars of the address of the ICAV's head office and registered office;

(d) with respect to each person named in the statement referred to in section 10 (2)(b)(ii) as being one of the first directors of the ICAV, and the person who is, or the persons who are, to be the first secretary or joint secretaries, the particulars specified in section 11 (3).

- (2) The Bank shall keep up-to-date the register referred to in *subsection (1)* so that it reflects any alterations in the instrument of incorporation, changes in the situation of the registered office or head office and changes in the persons who are directors or secretaries of the ICAV.
- (3) The register referred to in *subsection (1)* shall be kept in such form as the Bank considers appropriate and shall be made available for inspection free of charge on a website maintained or used by the Bank.

### **Commencement of registration order**

**15.** From the coming into operation of a registration order in respect of an ICAV, the subscribers to its instrument of incorporation, together with such other persons as may from time to time become members of the ICAV, shall constitute a body corporate—

- (a) with the name as registered or changed in accordance with this Act, and
- (b) having perpetual succession.

### **Decision to refuse registration order**

- 16.** (1) If the Bank decides to refuse to make a registration order in response to an application under *section 10*, the Bank shall give written notice to the applicant of the decision.
- (2) A decision to refuse to make a registration order is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

## Chapter 2

### *Authorisation and approval*

#### **Authorisation**

**17.** This Chapter enables the Bank to authorise an ICAV which is not authorised under the UCITS Regulations.

#### **Application for authorisation**

- 18.** (1) To obtain authorisation an ICAV shall make an application to the Bank.
- (2) The application shall—
- (a) be made in writing in such manner and form as may be specified by the Bank,

(b) contain—

- (i) a statement of the general nature of the investment objectives of the ICAV,
  - (ii) if the ICAV is not authorised under the AIFM Regulations, the full name and address of the proposed external AIFM within the meaning of the AIFM Regulations, and
  - (iii) the full name and address of the proposed depositary,
- and

(c) contain or be accompanied by such other information as the Bank may specify for the purpose of determining the application.

- (3) At any time after receiving an application and before determining it the Bank may by notice in writing require the person who made the application to provide additional information to it.
- (4) Different requirements may be specified by the Bank for the purposes of *subsection (2)(b)* and *(c)* in relation to different classes of applications.
- (5) The Bank may specify that information provided to it in compliance with *subsection (1)* be certified or attested as to its authenticity or correctness in such manner as the Bank may specify, including by statutory declaration.
- (6) A person commits a category 2 offence if—
- (a) for the purposes of or in connection with any application under this section, or
  - (b) in purported compliance with any requirement imposed on the person by or under this section,
- the person provides information that is false or misleading in a material particular, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading.

## Grant of authorisation

**19.** (1) On an application made to it by an ICAV under *section 18*, the Bank shall grant an authorisation in respect of the ICAV if—

- (a) it is satisfied that—

- (i) the application complies with that section, and
  - (ii) the ICAV, when authorised, will be capable of complying with the conditions imposed by the Bank under section 27 and any requirements imposed by or under any enactment or financial services legislation,
- (b) the Bank has approved the proposed depository under section 21,
- (c) if there is to be a management company, the Bank has approved the proposed management company under section 23, and
- (d) the Bank is satisfied that—
- (i) the directors of the ICAV are fit and proper persons,
  - (ii) the experience and expertise of the directors of the ICAV, taken together, is appropriate for the purposes of carrying on the business of an ICAV,
  - (iii) the name of the ICAV complies with section 29, and
  - (iv) the fee (if any) prescribed under section 32E of the Central Bank Act 1942, for the purposes of this subsection has been paid.
- (2) If the Bank grants an authorisation under *subsection (1)*, it shall give written notice of the authorisation to the ICAV.
- (3) The authorisation shall specify the date on which it shall come into operation.

### Decision to refuse authorisation

- 20.** (1) The Bank may refuse an application for authorisation under section 18 if the Bank is not satisfied that authorisation would be in the interests of the proper and orderly regulation of the ICAV or the application for authorisation of an ICAV has failed to comply with section 18.
- (2) If the Bank decides to refuse to grant an authorisation in response to an application under section 18, the Bank shall give written notice to the applicant of the decision.
- (3) A decision to refuse to grant an authorisation is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

### Appointment and approval of depository

21. (1) An ICAV which is not authorised under the UCITS Regulations shall appoint a depositary.
- (2) An application for approval of a depositary shall be made in writing to the Bank in such manner and form as may be specified by the Bank and shall contain or be accompanied by such other information as the Bank may specify for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Bank may by notice in writing require the person who made the application to provide additional information to it.
- (4) The Bank may specify that information provided to it in compliance with *subsection (2) or (3)* be certified or attested as to its authenticity or correctness in such manner as the Bank may specify, including by statutory declaration.
- (5) A person commits a category 2 offence if—
- (a) for the purposes of or in connection with any application under this section, or
- (b) in purported compliance with any requirement imposed on the person by or under this section,
- the person provides information that is false or misleading in a material particular, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading.
- (6) The Bank may approve a depositary if satisfied that the depositary will be in a position to comply with any conditions imposed by the Bank under *section 27*.
- (7) The Bank may refuse an application for approval under this section if the Bank is not satisfied that approval would be in the interests of the proper and orderly regulation of an ICAV or the application for approval of a depositary has failed to comply with this section.
- (8) If the Bank decides to refuse to grant an approval in response to an application under this section, the Bank shall give written notice to the applicant of the decision.
- (9) A decision to refuse to grant an approval is an appealable decision for the purposes of Part VIIA of the *Central Bank Act 1942*.

### **Application for approval of management company**

- 22.** (1) An application for approval of a management company shall be made in writing to the Bank in such manner and form as may be specified by the Bank and shall contain or be accompanied by such other information as the Bank may specify for the purpose of determining the application.
- (2) At any time after receiving an application and before determining it the Bank may by notice in writing require the person who made the application to provide additional information to it.
- (3) The Bank may specify that information provided to it in compliance with *subsection (1)* be certified or attested as to its authenticity or correctness in such manner as the Bank may specify, including by statutory declaration.
- (4) A person commits a category 2 offence if—
- (a) for the purposes of or in connection with any application under this section, or
- (b) in purported compliance with any requirement imposed on the person by or under this section,
- the person provides information that is false or misleading in a material particular, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading.

### Approval of management company

- 23.** On an application made to it by an ICAV under *section 22*, the Bank shall approve a management company if the management company is—
- (a) an alternative investment fund manager authorised by the Bank under Part 2 of the AIFM Regulations or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011<sup>1</sup>, or
- (b) the Bank is satisfied that—
- (i) the competence of the management company in respect of matters of the kind with which it would be concerned in relation to an ICAV and its probity are such as to render it suitable to act as management company,
- (ii) the management company is a body corporate that is incorporated under the law of the State and has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities, and

(iii) the management company will be in a position to comply with any conditions imposed by the Bank under section 27.

### Refusal to approve management company

- 24.** (1) The Bank may refuse an application for approval under section 22 if the Bank is not satisfied that approval would be in the interests of the proper and orderly regulation of the ICAV or the application for approval has failed to comply with section 22.
- (2) If the Bank decides to refuse to grant an approval in response to an application under section 22, the Bank shall give written notice to the applicant of the decision.
- (3) A decision to refuse to grant an approval is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

### Authorisation or approval not a warranty

- 25.** The authorisation by the Bank of an ICAV or the approval of a depositary or management company shall not constitute a warranty by the Bank as to the performance of the ICAV, depositary or management company and the Bank shall not be liable for the performance or default of an ICAV, depositary or management company.

### Revocation of authorisation

- 26.** (1) The Bank may revoke an authorisation under section 19 if it appears to the Bank that—
- (a) any requirement for the granting of the authorisation is no longer satisfied,
  - (b) the ICAV, any of its directors or its secretary or any of its secretaries, its depositary or (if it has one) its management company—
    - (i) has seriously or systematically contravened financial services legislation, or
    - (ii) in purported compliance with any requirement imposed by or under financial services legislation, has furnished information to the Bank that is false or misleading in a material particular, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading,
  - (c) the ICAV has not carried on the business of an authorised ICAV in the previous 6 months, or

- (d) it is desirable to do so in order to protect the interests of shareholders or potential shareholders in the ICAV.
- (2) For the purposes of *subsection (1)(b)*, the Bank may take into account any matter relating to, as appropriate—
- (a) the ICAV, its depositary or (if it has one) its management company,
  - (b) any director or secretary of the ICAV,
  - (c) any director of the depositary or management company,
  - (d) any person employed by or associated, for the purposes of the business of the ICAV, with the ICAV, depositary or management company,
  - (e) any person exercising influence over any director of the ICAV, depositary or management company,
  - (f) any body corporate in the same group of bodies corporate as the ICAV, depositary or management company,
  - (g) any director of any such body corporate, or
  - (h) any person exercising influence over any such body corporate.
- (3) Before revoking an authorisation under *subsection (1)* the Bank shall ensure that such steps as are necessary and appropriate to secure the winding up of the ICAV (whether by the court or otherwise) have been taken.
- (4) The Bank may revoke an authorisation granted to an ICAV under *section 19* at the written request of the ICAV, its depositary or (if it has one) its management company.
- (5) Where the Bank proposes to revoke the authorisation of an ICAV otherwise than at the request of the ICAV, its depositary or its management company, it shall give notice in writing to each of them of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by *subsection (6)*.
- (6) An ICAV, depositary or management company on whom a notice is served under *subsection (5)* may, within 14 days after the date of service, make representations in writing to the Bank.

- (7) The Bank shall have regard to any representations made in accordance with *subsection (6)* in determining whether to revoke the authorisation.

### **Imposition of conditions by Bank**

**27.** (1) The Bank may, by notice in writing, impose such conditions for—

- (a) the granting of an authorisation of an ICAV,
- (b) the granting of an approval of a depositary, or
- (c) the granting of an approval of a management company,

under this Chapter as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of Irish collective asset-management vehicles, depositaries or management companies.

(2) Conditions imposed under *subsection (1)* may be imposed generally, in relation to particular classes of ICAV, depositaries or management companies or in relation to a particular ICAV, depositary or management company or by reference to any other matter that the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the ICAV, depositary or management company.

(3) Without prejudice to the generality of *subsections (1) and (2)* the conditions imposed may include conditions relating to (in particular)—

- (a) the investment policies of an ICAV,
- (b) the issuing and content of documentation and other information disseminated by an ICAV,
- (c) the criteria for appointment of a depositary,
- (d) the vesting of the assets or specified assets of an ICAV in a person nominated by the Bank with such of the powers or duties of a depositary with regard to the ICAV as are specified by the Bank,
- (e) the vesting of the assets or specified assets of an ICAV in a depositary,
- (f) borrowing policies of an ICAV, or
- (g) the timing and contents of reports issued by an ICAV,

and such other supervisory and reporting conditions relating to the business of an ICAV as the Bank considers appropriate and prudent to impose on the ICAV, depositary or management company.

(4) The power to impose conditions referred to in *subsection (1)* includes a power to impose such further conditions from time to time as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of Irish collective asset-management vehicles, depositaries and management companies.

(5) The Bank may, from time to time, by notice in writing given to an ICAV, depositary or management company, vary or revoke a condition imposed in accordance with *subsection (1)* or *(4)* or previously varied in accordance with this subsection.

### **Prohibition on carrying on business as ICAV unless authorised etc.**

**28.** (1) Neither a body that is not an authorised ICAV nor an individual shall carry on any business under a name which includes, as its last part, the words “Irish Collective Asset-management Vehicle” or the abbreviation “ICAV”.

(2) Neither a body that is not an ICAV nor an individual shall in any other manner make a representation that the body or the individual is an ICAV.

(3) A person who contravenes *subsection (1)* or *(2)* commits a category 2 offence.

## Chapter 3

### *Names and changes in instrument of incorporation*

#### **Name of ICAV**

**29.** (1) The name of an ICAV shall end with one of the following:

(a) Irish Collective Asset-management Vehicle;

(b) ICAV.

(2) The name of an ICAV shall not be, such as is in the opinion of the Bank, undesirable or misleading.

#### **Approval for change of name**

**30.** (1) If an ICAV proposes to change the name by which it is incorporated, it shall not do so unless the change is approved by the Bank as being neither undesirable nor misleading on an application under this section.

(2) If an ICAV purports to change the name by which it is incorporated without first obtaining the approval of the Bank under this section, the ICAV and any officer of it who is in default commits a category 3 offence.

### **Alteration in instrument of incorporation**

**31.** (1) No alteration in the instrument of incorporation of an ICAV shall be made unless—

(a) the alteration has been approved—

(i) by ordinary resolution, or

(ii) if the instrument of incorporation so requires, by a resolution passed by such majority as is specified in the instrument of incorporation of the votes cast by the members of the ICAV who, being entitled to do so, vote in person or by proxy at a general meeting of the ICAV,

or

(b) the depositary of the ICAV has certified in writing that the alteration—

(i) does not prejudice the interests of the members of the ICAV, and

(ii) does not relate to any such matter as may be specified by the Bank as one in the case of which an alteration may be made only if approved by members of an ICAV.

(2) No alteration in the instrument of incorporation of an ICAV shall be made without the approval of the Bank.

(3) Any person who makes an alteration in the instrument of incorporation of an ICAV otherwise than in accordance with *subsections (1) and (2)* commits a category 3 offence.

(4) Within 21 days after the date of the making of an alteration in the instrument of incorporation of an ICAV, the ICAV shall deposit with the Bank a copy of the instrument of incorporation as so altered or containing the alterations.

(5) If an ICAV fails to comply with *subsection (4)*, it commits a category 2 offence.

- (6) In this section “alteration in the instrument of incorporation” does not include a change in the name of the ICAV.

## Chapter 4

### *Execution of documents, seals, etc.*

#### **Execution of documents**

**32.** (1) Contracts on behalf of an ICAV may be made as follows:

- (a) a contract which, if made between natural persons, would be by law required to be in writing and to be under seal, may be made on behalf of the ICAV in writing under the common seal of the ICAV in accordance with this section;
  - (b) a contract which, if made between natural persons, would be by law required to be in writing, signed by the parties, may be made on behalf of the ICAV in writing, signed by any person acting under its authority, express or implied;
  - (c) a contract which, if made between natural persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the ICAV by any person acting under its authority, express or implied.
- (2) A contract made according to this section shall bind the ICAV and its successors and all other parties to it.
- (3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.
- (4) The following provisions of this section shall apply whether it is the case that—
- (a) as permitted by section 33, the ICAV does not have a common seal, or
  - (b) the ICAV does have such a seal.
- (5) A document has the same effect as if executed under the common seal of the ICAV if it is expressed (in whatever form of words) to be executed by the ICAV and it is signed on behalf of the ICAV—
- (a) by 2 authorised signatories, or

(b) by a director of the ICAV in the presence of a witness who attests the signature.

(6) Each of the following is an authorised signatory for the purposes of *subsection (5)*:

(a) a director of the ICAV;

(b) the secretary (or any joint secretary) of the ICAV; or

(c) any person authorised by the directors of the ICAV in accordance with the ICAV's instrument of incorporation.

(7) Where a document is to be signed by a person on behalf of more than one ICAV, it is not duly signed by that person for the purposes of this section unless he or she signs it separately in each capacity.

(8) References in this section to a document being (or purporting to be) signed by a secretary are to be read, in a case where that office is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.

### Common seal

**33.** (1) An ICAV may provide itself with a common seal (but there is no requirement that it shall have such a seal).

(2) An ICAV which has a common seal shall have its name engraved in legible characters on the seal.

(3) A person who is an officer of an ICAV, or a person acting on behalf of an ICAV, commits a category 3 offence by using, or authorising the use of, a seal purporting to be a seal of the ICAV on which its name is not engraved as required by *subsection (2)*.

### Official seal for share certificates

**34.** (1) An ICAV which has a common seal may have, for use for sealing shares issued by the ICAV and for sealing documents creating or evidencing shares so issued, an official seal which is a facsimile of its common seal with the addition on its face of the word "securities".

(2) The official seal when duly affixed to a document has the same effect as the ICAV's common seal.

## Chapter 5

### *Sub-funds of umbrella funds*

## Segregated liability of ICAV sub-funds

**35.** Despite any enactment or rule of law to the contrary—

- (a) any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund, and
- (b) no umbrella fund or any director, receiver, liquidator, provisional liquidator or other person shall apply, or be obliged to apply, the assets of any such sub-fund in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund.

## Requirements to be complied with by, and other matters respecting, an umbrella fund

**36.** (1) An umbrella fund to which section 35 applies shall—

- (a) ensure that the words “An umbrella fund with segregated liability between sub-funds” are included in all its letterheads and in any agreement entered into by it in writing with a third party, and
  - (b) disclose to a third party that it is a segregated liability umbrella fund before it enters into an oral contract with the third party.
- (2) If an umbrella fund fails to comply with *subsection (1)(a)* or *(b)*, the umbrella fund and any officer of it who is in default commits a category 3 offence.
- (3) There shall be implied in every contract, agreement, arrangement or transaction entered into by an umbrella fund to which section 35 applies the following terms:
- (a) the party or parties contracting with the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wherever, to have recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund;
  - (b) if any party contracting with the umbrella fund shall succeed by any means whatsoever or wherever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by it;

- (c) if any party contracting with the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that sub-fund, that party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property.
- (4) All sums recovered by an umbrella fund as a result of any such trust as is described in *subsection (3)(c)* shall be credited against any concurrent liability pursuant to the implied term set out in *subsection (3)(b)*.
- (5) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in *paragraph (b) or (c) of subsection (3)* or by any other means whatsoever or wherever in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected.
- (6) In the event that assets attributable to a sub-fund to which *section 35* applies are taken in execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the directors of the umbrella fund, with the consent of the depositary, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it.

### Further matters about umbrella funds

- 37.** (1) Without prejudice to the other provisions of this Chapter, a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, but an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds as apply at law in respect of an ICAV and the property of a sub-fund is subject to orders of the High Court as it would have been if the sub-fund were a separate legal person.
- (2) Nothing in this Chapter shall prevent the application of any enactment or rule of law which would require the application of the assets of any sub-fund in discharge of some or all of the liabilities of any other sub-fund on the grounds of fraud or misrepresentation.

- (3) A sub-fund may be wound up as if the sub-fund were a separate ICAV but, in any such case, the appointment of the liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the sub-fund or sub-funds which is or are being wound up.
- (4) For the purposes of *subsection (3)*, all references in enactments relating to the winding up of an ICAV to one of the following words shall be read as follows:
- (a) "ICAV" shall be read as referring to the sub-fund or sub-funds which is or are being wound up;
  - (b) a "member" or "members" shall be read as referring to the holders of the shares in that sub-fund or sub-funds;
  - (c) "creditors" shall be read as referring to the creditors of that sub-fund or sub-funds.

## PART 3

### Shares and Debentures etc.

#### Power to issue shares and debentures

- 38.** (1) An ICAV may issue shares and debentures according to its instrument of incorporation, its prospectus, Bank regulations and conditions imposed under *section 27*.
- (2) An ICAV may issue shares as fully paid up, or subscribed and partly paid up, in such manner as may be provided by its instrument of incorporation and in accordance with its prospectus, Bank regulations and conditions imposed under *section 27*.
- (3) An ICAV may issue more than one class of shares, and may create more than one sub-fund, in accordance with its instrument of incorporation, its prospectus, Bank regulations and conditions imposed under *section 27*.
- (4) The assets of an ICAV shall belong exclusively to the ICAV and no shareholder has any interest in the assets of the ICAV.
- (5) The rights which attach to each share of an ICAV of any given class are the following:
- (a) the right, in accordance with the instrument of incorporation of the ICAV, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of assets of the ICAV;

- (b) the right, in accordance with the instrument of incorporation of the ICAV, to vote at any general meeting of the ICAV or at any meeting of shareholders of that class of shares;
- (c) such other rights as may be provided for in the instrument of incorporation of the ICAV in relation to shares of that class, subject to Bank regulations and conditions imposed under section 27.

(6) In respect of any class of shares, the rights referred to in *subsection (5)* may, if the instrument of incorporation of the ICAV so provides, be expressed in one or more denominations.

## Share certificates

- 39.** (1) Subject to *subsection (3)*, to Bank regulations and conditions imposed under section 27, an ICAV shall prepare and have ready for delivery the certificates of all shares and debentures allotted or transferred, in accordance with its instrument of incorporation.
- (2) In *subsection (1)* "transfer" means a transfer that is (where appropriate) duly stamped and is otherwise valid, and does not include such a transfer as the ICAV is, for any reason, entitled to refuse to register and does not register.
- (3) *Subsection (1)* does not require an ICAV to prepare share certificates in the following circumstances:
- (a) where the ICAV's instrument of incorporation states that share certificates will not be issued and contains provision for the issue of written confirmations of entry in the register of members;
  - (b) where the shareholder has indicated to the ICAV in writing that the shareholder does not wish to receive a certificate.
- (4) If an ICAV fails to comply with *subsection (1)* the ICAV and any officer of it who is in default commits a category 3 offence.

## Evidence of share certificate

- 40.** A certificate under the common seal of an ICAV, or the seal kept by an ICAV pursuant to section 34, specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares.

## Nature of shareholding

**41.** The shares or other interest of any member in an ICAV shall be personal property, transferable, subject to the provisions of this Act, Bank regulations and conditions imposed under *section 27*, in a manner provided by the instrument of incorporation of the ICAV and shall not be of the nature of real property.

### **Transfer of registered shares**

**42.** (1) Subject to *subsection (2)*, and despite anything in the instrument of incorporation of an ICAV, it shall not be lawful for the ICAV to register a transfer of shares in or debentures of the ICAV unless a proper instrument of transfer has been delivered to the ICAV.

(2) Nothing in *subsection (1)* shall prejudice any power of the ICAV to register as shareholder or debenture holder any person to whom the right to any shares in, or debentures of, the ICAV has been transmitted by operation of law.

(3) If an ICAV registers a transfer in contravention of this section the ICAV and any officer of it who is in default commits a category 3 offence.

(4) In this section “instrument of transfer” means such evidence as is required to prove the right of the transferor to transfer the shares as set out in the instrument of incorporation of the ICAV or the prospectus of the ICAV.

### **Refusal to register transfer of shares**

**43.** (1) An ICAV may, before the end of the period of 2 months commencing with the date of receipt of the transfer documents relating to any transfer of shares, refuse to register the transfer if—

(a) there exists a minimum requirement as to the number or value of shares that are to be held by any shareholder of the ICAV and the transfer would result in either the transferor or transferee holding less than the required minimum, or

(b) the transfer would result in a contravention of any provision of the ICAV’s instrument of incorporation or would produce a result inconsistent with any provision of the ICAV’s prospectus.

(2) An ICAV shall give the transferee written notice of any refusal to register a transfer of shares.

- (3) But an ICAV is not required to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any provision of law (including any law that is for the time being in force in a country or territory other than the State).
- (4) If an ICAV fails to give notice as required by *subsection (2)* the ICAV and any officer of it who is in default commits a category 3 offence.

### **Certification of transfer of shares**

**44.** (1) The certification by an ICAV of any instrument of transfer of shares in or debentures of the ICAV shall be taken as a representation by the ICAV to any person acting on the faith of the certificate that there have been produced to the ICAV such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) For the purposes of *subsection (1)*, an instrument shall be deemed to be certified if—

- (a) the instrument bears the words “certificate lodged” (or words to the same effect), and
- (b) the instrument is signed by a person acting under authority (whether express or implied) given by the ICAV to issue and sign such certificates.

(3) For the purposes of *subsection (2)*, a certificate shall be deemed to be signed by any person if—

- (a) it purports to be authenticated by the person’s signature or initials (whether hand written or not), and
- (b) it is not shown that the signature or initials was or were placed there neither by the person nor by any person authorised to use the signature or initials for the purpose of certifying transfers on the ICAV’s behalf.

(4) Where any person acts on the faith of a false certificate by an ICAV made negligently, the ICAV shall be under the same liability to the person as if the certificate had been made fraudulently.

### **Transfer: supplementary**

**45.** (1) Nothing in the preceding provisions of this Part prejudices any power of an ICAV to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the ICAV has been transmitted by operation of law.

- (2) A transfer of registered shares or other interest of a deceased member of an ICAV made by the deceased member's personal representatives shall, although the personal representatives are not members of the ICAV, be as valid as if they had been such a member at the time of the execution of the instrument of transfer.
- (3) On the death of any one of the joint holders of any shares in an ICAV, the survivor is to be the only person recognised by the ICAV as having any title to or any interest in those shares.
- (4) The production to an ICAV of any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the ICAV, despite anything in its instrument of incorporation, as sufficient evidence of the grant.

### Power to purchase own shares

- 46.** (1) Subject to *subsection (2)*, the purchase by an ICAV of its own shares shall be on such terms and in such manner as may be provided by its instrument of incorporation and in accordance with Bank regulations and conditions imposed under *section 27*.
- (2) An ICAV shall not purchase its own shares unless they are fully paid, but nothing in this subsection shall prevent a purchase being made in accordance with *section 47 (2)*.
  - (3) But an ICAV is not required to create any reserve account.
  - (4) If an ICAV fails to comply with *subsection (2)* the ICAV and any officer of it who is in default commits a category 3 offence.

### Treatment of purchased shares

- 47.** (1) Shares of an ICAV which have been purchased by or otherwise transferred to the ICAV shall be cancelled and the amount of the issued share capital of the ICAV shall be reduced by the amount of the consideration paid by the ICAV for the purchase or other transfer of the shares.
- (2) Despite *subsection (1)*, an umbrella fund may, for the account of any of its sub-funds, and in accordance with conditions imposed by the Bank, acquire by subscription or transfer for consideration, shares of any class or classes, however described, representing other sub-funds of the same umbrella fund.

### Membership

48. Every person who agrees to become a member of an ICAV, and whose name is entered on its register of members, shall be a member of the ICAV.

### Register of members

49. (1) An ICAV shall keep a register of its members and enter in it the following particulars:

(a) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, the sub-fund (if any) and share class (if any) of such sub-fund to which the share belongs and any amount paid or agreed to be considered as paid on the shares held by each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member.

(2) The entries required under *subsection (1)(a)* and *(b)* shall be made within 2 days after the date of the conclusion of the agreement with the ICAV to become a member.

(3) The entry required under *subsection (1)(c)* shall be made—

(a) within 2 days after the date when the person concerned ceased to be a member, or

(b) if the person ceased to be a member otherwise than as a result of action by the ICAV, within 2 days after the date of the production to the ICAV of evidence satisfactory to the ICAV of the occurrence of the event whereby the person ceased to be a member.

(4) If an ICAV fails to comply with any of *subsections (1) to (3)*, the ICAV and any officer of it who is in default commits a category 3 offence.

### Inspection of register of members

50. (1) Subject to *subsection (2)*, the register of members shall be kept available for inspection by a person entitled to inspect it—

(a) at the registered office of the ICAV, or

(b) at an alternative place notified to the Bank under *subsection (3)* as the place where the register of members is kept.

(2) The register of members shall not be kept at a place outside the State.

- (3) Subject to *subsection (4)*, every ICAV shall send notice to the Bank of the place where its register of members is kept and of any change in that place.
- (4) An ICAV shall not be bound to send notice under *subsection (3)* where the register has, at all times since it came into existence, been kept at the registered office of the ICAV.
- (5) If an ICAV fails to comply with any of *subsections (1) to (3)*, the ICAV and any officer of it who is in default commits a category 3 offence.
- (6) The persons entitled to inspect the register of members of an ICAV are—
- (a) the Bank,
  - (b) the Director of Corporate Enforcement, and
  - (c) any statutory body which needs to inspect the register in order properly to exercise any of its functions.

### **Consequences of failure to comply with requirements as to register owing to agent's default**

**51.** Where, by virtue of *section 50 (1)(b)*, the register of members of an ICAV is kept at the office of some person other than the ICAV, and by reason of any default of that person the ICAV fails to comply with that section or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if that other person were an officer of the ICAV who is in default.

### **Rectification of register**

**52.** (1) If—

- (a) the name of any person is, without sufficient cause, entered in, or omitted from, the register of members in contravention of *section 49 (1)*,
- (b) default is made as to the details contained in any entry on the register of members in contravention of *section 49 (1)*, or
- (c) default is made in entering on the register of members within the period fixed by *section 49 (3)* the fact of any person having ceased to be a member,

the person aggrieved, or any member of the ICAV, or the ICAV, may apply to the High Court for rectification of the register.

- (2) Where an application is made under this section, the High Court may either refuse the application or may order rectification of the register and payment by the ICAV of compensation for any loss sustained by any party aggrieved.
- (3) On an application under this section the High Court may decide any question relating to the title of any person who is a party to the application to have his or her name entered in or omitted from the register of members (whether the question arises between members or alleged members, or between members or alleged members on the one hand and the ICAV on the other hand) and generally may decide any question necessary or expedient to be decided for rectification of the register.
- (4) The High Court when making an order for the rectification of the register of members shall by its order direct, if appropriate, notice of the rectification to be given to the Bank.
- (5) An ICAV may, without application to the High Court, at any time rectify any error or omission in the register but such a rectification shall not adversely affect any person unless the person agrees to the rectification made.
- (6) The ICAV shall, within 21 days after the date on which rectification under *subsection (5)* has been made, give to the Bank notice in writing of the rectification if the error or omission also occurs in any document forwarded by the ICAV to the Bank.
- (7) Without prejudice to the generality of *subsection (5)*, a rectification may be effected by the ICAV under that subsection of an error or omission that relates to the amount of the ICAV's issued share capital (whether it consists of an overstatement or an understatement of it) and *subsection (6)* shall apply in the circumstances there set out in the event of such a rectification.

### **Trusts not to be entered on the register**

**53.** No notice of any trust, express, implied or constructive, shall be entered on the register of members of an ICAV.

### **Register as evidence**

**54.** The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted in it.

### **Power of members to complain of oppressive conduct**

- 55.** (1) A member of an ICAV who complains that the affairs of the ICAV are being conducted or that the powers of the directors of the ICAV are being exercised—
- (a) in a manner oppressive to the member or to any of the members (including himself or herself), or
  - (b) in disregard of the interest of the member or any of the members as a member or members,
- may apply to the High Court for an order under this section.
- (2) If, on an application under *subsection (1)* the High Court is of the opinion that the ICAV's affairs are being conducted or the directors' powers are being exercised in a manner mentioned in *subsection (1)(a)* or *(b)*, the High Court may, with a view to bringing to an end the matters complained of, make such order or orders as it thinks fit.
- (3) The orders which the High Court may so make include the following:
- (a) an order directing or prohibiting any act or cancelling or varying any transaction;
  - (b) an order for regulating the conduct of the ICAV's affairs in future;
  - (c) an order for the purchase of the shares of any members of the ICAV by other members of the ICAV or by the ICAV and, in the case of a purchase by the ICAV, for the reduction accordingly of the ICAV's capital;
  - (d) an order for the payment of compensation.
- (4) Where an order under this section makes any amendment of an ICAV's instrument of incorporation, then, despite anything in any other provision of this Act but subject to the provisions of the order, the ICAV concerned shall not have power without the leave of the High Court to make any further amendment of the instrument of incorporation inconsistent with the provisions of the order.
- (5) However, subject to *subsection (4)*, the amendment made by the order shall be of the same effect as if duly made by resolution of the ICAV, and the provisions of this Act shall apply to the instrument of incorporation as so amended accordingly.
- (6) A certified copy of any order under this section amending or giving leave to amend an ICAV's instrument of incorporation shall, within 21 days after the day on which it is made, be delivered by the ICAV to the Bank for registration.

(7) If an ICAV fails to comply with *subsection (6)*, the ICAV and any officer of it who is in default commits a category 3 offence.

(8) Each of the following:

(a) the personal representative of a person who, at the date of his or her death was a member of an ICAV;

(b) any trustee of, or person beneficially interested in, the shares of an ICAV by virtue of the will or intestacy of any such person;

may apply to the High Court under *subsection (1)* for an order under this section and, accordingly, any reference in that subsection to a member of an ICAV shall be construed as including a reference to any such personal representative, trustee or person beneficially interested or to all of them.

(9) If, in the opinion of the High Court, the hearing of proceedings under this section would involve the disclosure of information, the publication of which would be seriously prejudicial to the legitimate interests of the ICAV, the High Court may order that the hearing of the proceedings or any part of them shall be in camera.

## PART 4

### Directors and Other Officers

#### Chapter 1

##### *Appointment, removal etc.*

#### **Number of directors**

**56.** An ICAV shall have at least 2 directors.

#### **Secretary**

**57. (1)** An ICAV shall have a secretary or joint secretaries, who may be one of the directors.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the ICAV authorised generally or specially in that behalf by the directors.

- (3) Subject to *section 11 (6)*, the secretary shall be appointed by the directors of the company for such term, at such remuneration and on such conditions as they may think fit; and any secretary so appointed may be removed by them.
- (4) The directors of a company shall have a duty to ensure that the person appointed as secretary has the skills necessary to discharge his or her statutory and other legal duties and such other duties as may be delegated to the secretary by the directors.
- (5) The cases to which *subsection (4)* applies includes the case of an appointment of one of the directors of the company as secretary.
- (6) In *subsections (2) to (5)* references to a secretary include references to joint secretaries.

### **Prohibition on body corporate being director**

- 58.** (1) An ICAV shall not have as a director of the ICAV a body corporate or an unincorporated body of persons.
- (2) Any purported appointment of a body corporate or an unincorporated body of persons as a director of an ICAV shall be void.

### **Avoidance of acts done by person in dual capacity as director and secretary**

- 59.** A provision contained in this Act or any instrument made under it or in the instrument of incorporation of an ICAV requiring or authorising a thing to be done by or to a director and the secretary of an ICAV shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

### **Validity of acts of directors**

- 60.** The acts of a director of an ICAV shall be valid despite any defect which may afterwards be discovered in the director's appointment or qualification.

### **Appointment of directors to be voted on individually**

- 61.** (1) At a general meeting of an ICAV, a motion for the appointment of 2 or more persons as directors of the ICAV by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (2) Subject to *subsections (3) and (4)*, a resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

- (3) *Subsection (2)* shall not be taken as excluding the operation of *section 60*.
- (4) Where a resolution moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.
- (5) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for the person's appointment.
- (6) Nothing in this section shall apply to a resolution altering an ICAV's instrument of incorporation.

## Removal of directors

- 62.** (1) An ICAV may by ordinary resolution remove a director before the end of the director's period of office despite anything in its instrument of incorporation or in any agreement between the ICAV and the director.
- (2) In the case of a resolution to remove a director under this section, or to appoint somebody instead of the director so removed at the meeting at which he or she is removed, the following provisions shall apply:
- (a) the ICAV shall be given not less than 28 days' notice of the intention to move the resolution unless the directors of the ICAV have resolved to submit it;
- (b) on receipt of the notice the ICAV shall forthwith send a copy of the resolution to the director concerned, and the director (whether or not a member of the ICAV) shall be entitled to be heard on the resolution at the meeting;
- (c) the ICAV shall give its members notice of the resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of it, either by advertisement in a daily newspaper circulating in the district in which the registered office of the ICAV is situated or in any other mode allowed by the instrument of incorporation not less than 21 days before the date of the meeting.
- (3) If *subsection (2)* has not been complied with, the resolution shall, subject to *subsection (4)*, not be effective.
- (4) If, after notice of the intention to move a resolution such as is mentioned in *subsection (2)* has been given to the ICAV, a meeting is called for a date 28 days or less after the date on which the notice has been given, the notice, though not given within the time required by *paragraph (a)* of *subsection (2)*, shall be deemed to have been properly given for the purposes of that paragraph.

- (5) Subject to *subsection (7)*, where notice is given of an intended resolution to remove a director and the director concerned makes in relation to the resolution representations in writing to the ICAV (not exceeding a reasonable length) and requests their notification to the members of the ICAV, the ICAV shall (unless the representations are received by it too late for it to do so)—
- (a) in any notice of the resolution given to members of the ICAV, state the fact that the representations have been made, and
  - (b) send a copy of the representations to every member of the ICAV to whom notice of the meeting is sent (whether before or after receipt of the representations by the ICAV).
- (6) If a copy of the representations is not sent as mentioned in *subsection (5)* (whether because they were received too late or because of the ICAV's default), the director may (without prejudice to his or her right to be heard orally) require that the representations be read out at the meeting.
- (7) Copies of the representations need not be sent out, and the representations need not be read out at the meeting, as mentioned in *subsection (5)* or *(6)*, if, on the application either of the ICAV or of any other person who claims to be aggrieved, the High Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and orders that those things need not be done.
- (8) The High Court may order the ICAV's costs on an application under *subsection (7)* to be paid in whole or in part by the director concerned, even if the director is not a party to the application.

### **Prohibition of undischarged bankrupt acting as officer etc. of ICAV**

- 63.** (1) If any person being an undischarged bankrupt acts as a director or secretary of, or directly or indirectly takes part or is concerned in the promotion, formation or management of, an ICAV except with the leave of the High Court, the person commits a category 2 offence.
- (2) Where a person is convicted of an offence under *subsection (1)* the person shall be deemed to be subject to a disqualification order from the date of such conviction if he or she was not, or was not deemed to be, subject to such an order on that date.

### **Examination as to solvency status of director etc.**

64. (1) Where the Director of Corporate Enforcement has reason to believe that a director or secretary of an ICAV is an undischarged bankrupt, the Director may require the director or secretary of the ICAV to produce by a specified date a sworn statement of all relevant facts pertaining to the director's, or secretary's, financial position, both within the State and elsewhere, and, in particular, to any matter pertaining to bankruptcy as at a particular date.
- (2) The High Court may, on the application of the Director of Corporate Enforcement, require a director or secretary of an ICAV who has made a statement under *subsection (1)* to appear before it and answer on oath any question pertaining to the content of the statement.
- (3) The High Court may, on the application of the Director of Corporate Enforcement, make a disqualification order against a person who is a director or secretary of an ICAV, to be for such period as the High Court specifies, on the grounds that the person is an undischarged bankrupt.
- (4) A director or secretary of an ICAV who fails to comply with a requirement under *subsection (1)* commits a category 3 offence.

### Register of directors and secretaries

65. (1) An ICAV shall keep at its registered office a register of its directors and secretaries and, if any, its deputy and assistant secretaries.
- (2) Subject to *subsection (3)*, the register shall contain the following particulars relating to each director:
- (a) present forename and surname and any former forename and surname;
  - (b) date of birth;
  - (c) usual residential address;
  - (d) nationality;
  - (e) business occupation, if any;
  - (f) particulars of any other present or former directorships of bodies corporate, whether incorporated in the State or elsewhere.
- (3) It is not necessary for the register to contain on any day particulars of any directorship—
- (a) which has not been held by a director at any time during the 5 years preceding that day, or

(b) which is held or was held by a director in bodies corporate of which the ICAV is or was the wholly-owned subsidiary or which are or were the wholly-owned subsidiaries either of the ICAV or of another body corporate of which the ICAV is or was the wholly-owned subsidiary,

and for the purposes of this subsection a body corporate is the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(4) Subject to *subsection (5)*, the register shall contain the following particulars relating to the secretary or, where there are joint secretaries, in relation to each of them, any deputy secretary or any assistant secretary:

(a) in the case of an individual, present forename and surname, any former forename and surname, usual residential address and date of birth;

(b) in the case of a body corporate, the corporate name and, if the body corporate is registered, its registered office, the register in which it is registered and its number in that register.

(5) Where all the partners in a firm are joint secretaries of an ICAV, the name and principal office of the firm may be stated instead of those particulars.

(6) The ICAV shall, within 14 days after the date of the happening of—

(a) any change among its directors or in its secretary or deputy or assistant secretary, or

(b) any change in any of the particulars contained in the register,

send to the Bank a notification in writing of the change and of the date on which it occurred.

(7) In the case of a person who is a director of more than one ICAV the following provisions apply:

(a) the person may send a notification in writing to the Bank of a change in usual residential address or of a change in name and (in each case) of the date on which the change occurred;

(b) if such a notification is sent to the Bank and each ICAV is listed in the notification as being one of which the person is a director—

(i) each ICAV shall be relieved, as respects, and only as respects, that particular change or, as the case may be, those particular changes, of the obligation under *subsection (6)* to send a notification of it or them to the Bank, and

(ii) the Bank may proceed to record the relevant change or changes concerning the person in relation to each ICAV.

(8) A notification sent to the Bank pursuant to *subsection (6)* of the appointment of a person as a director, secretary or joint secretary, deputy secretary or assistant secretary of an ICAV shall be accompanied by a consent signed by that person to act as director, secretary or joint secretary, deputy secretary or assistant secretary, as the case may be.

(9) For the purposes of this section—

(a) in the case of a person usually known by a title different from his or her surname, the expression “surname” means that title,

(b) references to a “former forename or surname” do not include—

(i) in the case of a person usually known by a title different from his or her surname, the name by which he or she was known previous to the adoption of or succession to the title,

(ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years, or

(iii) in the case of a married woman, the name or surname by which she was known previous to her marriage.

### Provisions supplementary to *section 65*

**66.** (1) Without prejudice to *section 65 (6)*, a change among the directors for the purposes of that provision includes the case of a director’s becoming disqualified under the law of a country or territory other than the State (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking; and, accordingly, in such a case the notification under *section 65 (6)* shall state in relation to the director—

(a) the jurisdiction in which the director became disqualified,

(b) the date on which the director became disqualified, and

(c) the period for which the director is disqualified.

- (2) Without prejudice to *subsection (1)* and to the requirement under *section 65 (8)* that the notification be accompanied by the consent referred to there, if—
- (a) the notification sent to the Bank pursuant to *section 65 (6)* is a notification of the appointment of a person as a director of an ICAV, and
  - (b) that person is a person who is disqualified under the law of a country or territory other than the State (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking,
- that person shall secure that the notification is accompanied by a statement in writing and signed by that person specifying—
- (i) the jurisdiction in which the person became disqualified,
  - (ii) the date on which the person became disqualified, and
  - (iii) the period for which the person is disqualified.
- (3) It shall be the duty of each director and secretary and deputy or assistant secretary of an ICAV to give information in writing to the ICAV as soon as may be of such matters as may be necessary to enable the ICAV to comply with *section 65* and the preceding provisions of this section.
- (4) If default is made in complying with *section 65*, the ICAV and any officer of it who is in default commits a category 3 offence.
- (5) A person who fails to comply with *subsection (1), (2) or (3)* commits a category 3 offence.

### **Entitlement to notify Bank of changes if *section 65 (6)* contravened**

- 67.** (1) This section applies if an ICAV fails to send, in accordance with *section 65 (6)*, a notification, in the specified form, to the Bank of the fact of a person's having ceased, for whatever reason, to be a director or secretary of the ICAV and of the date on which that event occurred.
- (2) The former director or secretary may serve on the ICAV a notice—
- (a) requesting it to send forthwith the notification of that matter in the specified form to the Bank, and

(b) stating that, if the ICAV fails to comply with that request within 21 days after the date of the service of the notice on it, he or she will forward to the Bank and to every person who, to his or her knowledge, is an officer of the ICAV a copy of any notice of resignation by him or her as a director or secretary of the ICAV or any other documentary proof of his or her having ceased to be such a director or secretary together with what is required to be forwarded by *subsection (3)*.

(3) This subsection requires to be forwarded—

(a) to the Bank, such additional information as may be specified by the Bank (which may include a statutory declaration made by the former director or secretary stating the names of the persons who, to his or her knowledge, are officers of the ICAV), and

(b) to every other person who, to his or her knowledge, is an officer of the ICAV, a written request of the person that he or she take such steps as will ensure that the failure of the ICAV to comply with the notice continues no further.

(4) If an ICAV fails to comply with a request made of it under a notice referred to in *subsection (2)* the person who served the notice may forward to the Bank and to every person who, to his or her knowledge, is an officer of the ICAV a copy of the notice of resignation or other documentary proof referred to in *subsection (2)(b)* if, but only if, there is forwarded together with that notice or proof—

(a) in the case of the Bank, the additional information referred to in *subsection (3)(a)*, and

(b) in the case of every other such person, the written request referred to in *subsection (3)(b)*.

(5) No notice of resignation or other documentary proof of a person's having ceased to be a director or secretary of an ICAV which is forwarded to the Bank by that person (other than such a notice or other proof which is forwarded under this section) shall be considered by the Bank.

(6) No additional information referred to in *subsection (3)(a)* that is—

(a) included in a notice of resignation or other documentary proof referred to in this section, and

(b) forwarded, under and in accordance with this section, to the Bank,

shall, of itself, be regarded as constituting defamatory matter.

### **Particulars relating to directors to be shown on all business letters**

- 68.** (1) Subject to *subsection (2)*, an ICAV shall, in all business letters on or in which the ICAV's name appears and which are sent by the ICAV to any person, state in legible characters in relation to every director the following particulars:
- (a) the director's present forename, or initials, and present surname;
  - (b) any former forenames and surnames of the director;
  - (c) the director's nationality, if not Irish.
- (2) If special circumstances exist which render it in the opinion of the Bank expedient that such an exemption should be granted, the Bank may, subject to such conditions as it may think fit, grant exemption from the obligations imposed by *subsection (1)*.
- (3) If an ICAV makes default in complying with this section, the ICAV and any officer of it who is in default commits a category 3 offence.
- (4) For the purposes of this section—
- (a) "director" includes a shadow director and "officer" shall be construed accordingly;
  - (b) "initials" includes a recognised abbreviation of a forename;
  - (c) *subsection (9) of section 65* shall apply as it applies for the purposes of that section.

## Chapter 2

### *Controls of directors*

#### **Prohibition of tax-free payments to directors**

- 69.** (1) It shall not be lawful for an ICAV to pay a director of the ICAV remuneration (whether as director or otherwise)—
- (a) free of income tax or the universal social charge, or
  - (b) otherwise calculated by reference to or varying with the amount of the director's income or to or with the rate of income tax.
- (2) Any provision contained in—
- (a) an ICAV's instrument of incorporation,

(b) any contract, or

(c) any resolution of an ICAV or an ICAV's directors,

for payment to a director of remuneration in the manner referred to in *subsection (1)* shall have effect as if it provided for payment, as a gross sum subject to income tax or the universal social charge, of the net sum for which it actually provides.

### **Payment of compensation**

**70.** (1) It shall not be lawful for an ICAV to make to any director of the ICAV any payment by way of compensation for loss of office, or as consideration for or in connection with retirement from office, unless the following conditions are first satisfied.

(2) Those conditions are—

(a) that particulars relating to the proposed payment (including its amount) are disclosed to the members of the ICAV, and

(b) that the proposal is approved by resolution of the ICAV in general meeting.

(3) Where a payment which is unlawful under *subsection (1)* is made to a director of an ICAV, the ICAV and any officer of it who is in default commits a category 3 offence.

### **Duty of director to disclose payments made in connection with transfer of shares**

**71.** (1) The following duty arises on the part of a director where, in connection with the transfer to any persons of all or any of the shares in an ICAV being a transfer resulting from—

(a) an offer made to the general body of shareholders,

(b) an offer made by or on behalf of some other body corporate, with a view to the ICAV becoming its subsidiary or a subsidiary of its holding company,

(c) an offer made by or on behalf of an individual with a view to his or her obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the ICAV, or

(d) any other offer which is conditional on acceptance to a given extent,

- a payment is to be made to the director of the ICAV by way of compensation for loss of office, or as a consideration for or in connection with retirement from office.
- (2) That duty on the part of the director is to take all reasonable steps to secure that particulars of the proposed payment (including its amount) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.
- (3) If—
- (a) any such director fails to take reasonable steps as mentioned in *subsection (2)*, or
  - (b) any person who has been properly required by any such director to include the particulars specified in that subsection in, or send them with, any such notice so mentioned fails so to do,
- he or she commits a category 3 offence.
- (4) Unless—
- (a) the requirements of *subsections (1) and (2)* are complied with in relation to any such payment as is mentioned in *subsection (1)*, and
  - (b) the making of the proposed payment is, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,
- any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him or her in distributing that sum among those persons shall be borne by him or her and not retained out of that sum.
- (5) Where the shareholders referred to in *paragraph (b) of subsection (4)* are not all the members of the ICAV and no provision is made by the instrument of incorporation for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the ICAV's instrument of incorporation relating to general meetings of the ICAV shall, for that purpose, apply to the meeting either without modification or with such modifications as the Bank on the application of any person concerned may specify for the purpose of adapting them to the circumstances of the meeting.

- (6) If at a meeting summoned for the purpose of approving any payment as required by *paragraph (b) of subsection (4)*, a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed, for the purposes of that subsection, to have been approved.

### **Sections 70 and 71: supplementary**

**72.** (1) Where in proceedings for the recovery of any payment as having, by virtue of any provision of *section 70 or 71*, been received by any person in trust, it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or 2 years after that agreement or the offer leading to it, and

(b) the ICAV or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the provisions apply.

(2) If in connection with any such transfer as is mentioned in *section 70 or 71* —

(a) the price to be paid to a director of the ICAV for any shares in the ICAV held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares, or

(b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with retirement from office.

(3) References in *sections 70 and 71* to payments to any director of an ICAV by way of compensation for loss of office, or as consideration for or in connection with retirement from office, include payments to him or her by way of compensation for—

(a) loss of office as director of the ICAV, or

(b) the loss, while director of the ICAV, or on or in connection with his or her ceasing to be a director of the ICAV, of any other office in connection with the management of the ICAV's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary,

but do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 70 or 71 shall be taken to prejudice—

(a) the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in that section or with respect to any other like payments made or to be made to the directors of an ICAV, or

(b) the operation of any rule of law in relation to the accountability (if any) of any director for any such payment received by him.

(5) References in sections 70 and 71 and this section to a director include references to a former director.

### **Contracts of employment of directors**

**73.** (1) In this section "relevant term" means any term by which a director's employment with the ICAV of which he or she is a director or, where he or she is the director of a holding company, his or her employment within the group is to continue, or may be continued, otherwise than at the instance of the ICAV, for a period exceeding 5 years during which the employment—

(a) cannot be terminated by the ICAV by notice, or

(b) can be so terminated only in specified circumstances.

(2) References in *subsection (1)* to employment being continued (or its potential to be continued) are references to its being continued (or its potential to be continued) whether under the original agreement or under a new agreement entered into in pursuance of the original agreement.

(3) An ICAV shall not incorporate in any agreement a term to which this section applies unless the term is first approved by a resolution of the ICAV in general meeting and, in the case of a director of a holding company, by a resolution of the holding company in general meeting.

- (4) A resolution of an ICAV approving a term to which this section applies shall not be passed at a general meeting of the ICAV unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the ICAV both—
- (a) at the registered office of the ICAV for not less than the period of 15 days ending with the date of the meeting, and
  - (b) at the meeting itself.
- (5) A term incorporated in an agreement in contravention of this section shall to the extent that it contravenes this section be void; and that agreement shall be deemed to contain a term entitling the ICAV to terminate it at any time by the giving of reasonable notice.
- (6) In this section—
- “employment” includes employment under a contract for services;
  - “group”, in relation to a director of a holding company, means the group which consists of the holding company and its subsidiaries.

### **Section 73: anti-avoidance**

#### **74. (1) In any case where—**

- (a) a person is or is to be employed with an ICAV under an agreement which cannot be terminated by the ICAV by notice or can be so terminated only in specified circumstances, and
- (b) more than 6 months before the end of the period for which the person is or is to be so employed, the ICAV enters into a further agreement (otherwise than in pursuance of a right conferred by or by virtue of the original agreement on the other party to it) under which the person is to be employed with the ICAV or, where the person is a director of a holding company, within the group,

the definition of “relevant term” in section 73 shall apply as if to the period for which the person is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

- (2) Where *subsection (1)* has effect in relation to the definition of “relevant term” in *section 73*, *subsection (5)* of that section has effect as if “and the agreement and the original agreement shall each be deemed to contain a term entitling the ICAV to terminate it at any time by the giving of reasonable notice” were substituted for “and that agreement shall be deemed to contain a term entitling the ICAV to terminate it at any time by the giving of reasonable notice”.

### Prohibition of loans etc. to directors and connected persons

75. (1) An ICAV shall not—

- (a) make a loan or a quasi-loan to a director of the ICAV or its holding company or to a person connected with such a director,
- (b) enter into a credit transaction as creditor for such a director or a person so connected, or
- (c) enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such a director or a person so connected.

(2) An ICAV shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the ICAV, would have contravened *subsection (1)*; but for the purposes of this Act the transaction shall be treated as having been entered into on the date of the arrangement.

(3) An ICAV shall not take part in any arrangement whereby—

- (a) another person enters into a transaction which, if it had been entered into by the ICAV, would have contravened *subsection (1)* or *(2)*, and
- (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the ICAV.

(4) Where an ICAV contravenes *subsection (1)*, *(2)* or *(3)*, the ICAV and any officer of it who is in default commits a category 2 offence.

(5) Where an ICAV enters into a transaction or arrangement in contravention of *subsection (1)* or *(2)* the transaction or arrangement shall be voidable at the instance of the ICAV unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the ICAV has been indemnified in pursuance of *subsection (6)(b)* for the loss or damage suffered by it, or

- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person, other than the person for whom the transaction or arrangement was made, would be affected by its avoidance.
- (6) Without prejudice to any liability imposed otherwise than by this subsection but subject to *subsection (7)*, where an arrangement or transaction is made by an ICAV for a director of the ICAV or person connected with such a director in contravention of *subsection (1) or (2)*, that director and the person so connected and any other director of the ICAV who authorised the transaction or arrangement shall (whether or not it has been avoided in pursuance of *subsection (5)*) be liable—
- (a) to account to the ICAV for any gain which he or she has made directly or indirectly by the arrangement or transaction, and
- (b) (jointly and severally with any other person liable under this subsection) to indemnify the ICAV for any loss or damage resulting from the arrangement or transaction.
- (7) Where an arrangement or transaction is entered into by an ICAV and a person connected with a director of the ICAV in contravention of *subsection (1) or (2)* that director shall not be liable under *subsection (6)* if the person shows that he or she took all reasonable steps to secure the ICAV's compliance with that subsection and, in any case, a person so connected and any such other director as is mentioned in *subsection (6)* shall not be so liable if he or she shows that, at the time the arrangement or transaction was entered into, he or she did not know the relevant circumstances constituting the contravention.

### **Section 75: supplementary**

**76.** (1) In *section 75* "guarantee" includes indemnity.

(2) For the purposes of *section 75*—

- (a) a quasi-loan is a transaction under which one party ("the creditor") agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another ("the borrower") or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another ("the borrower")—
- (i) on terms that the borrower (or a person on the borrower's behalf) will reimburse the creditor, or

- (ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor,
  - (b) any reference to the person to whom a quasi-loan is made is a reference to the borrower, and
  - (c) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.
- (3) For the purposes of section 75, a credit transaction is a transaction under which one party (“the creditor”)—
- (a) supplies any goods or sells any land under a hire-purchase agreement or conditional sale agreement,
  - (b) leases or licenses the use of land or hires goods in return for periodical payments, or
  - (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump-sum or instalments or by way of periodical payments or otherwise) is to be deferred,
- but a lease of land which reserves a nominal annual rent of not more than €100 is not a credit transaction where an ICAV grants the lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the ICAV.
- (4) For the purposes of section 75, the value of a transaction or arrangement is—
- (a) in the case of a loan, the principal of the loan,
  - (b) in the case of a quasi-loan, the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor,
  - (c) in the case of a guarantee or security, the amount guaranteed or secured, and
  - (d) in the case of a transaction or arrangement, the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question or the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

- (5) For the purposes of *subsection (4)*, the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction is unascertainable, or for any other reason) shall, whether or not any liability under the transaction has been reduced, be deemed to exceed €65,000.
- (6) For the purposes of *section 75*, a transaction or arrangement is made for a person if—
- (a) in the case of a loan or quasi-loan, it is made to the person,
  - (b) in the case of a credit transaction, the person is one to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction,
  - (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to the person or a credit transaction made for the person, and
  - (d) in the case of a transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), the person is the person to whom the goods, land or services (or the interest) are supplied or transferred or for whom the arrangement was made.
- (7) *Section 75* has effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

### **Section 75: connected persons**

- 77.** (1) For the purposes of *section 75*, a person is connected with a director of an ICAV if, but only if, the person (not being a director of the ICAV) is—
- (a) the director's spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, parent, brother, sister or child,
  - (b) a person acting as the trustee of any trust, the principal beneficiaries of which are the director, the director's spouse or civil partner or any of the director's children or any body corporate which the director controls, or
  - (c) in partnership, within the meaning of *section 1 (1)* of the Partnership Act 1890, with the director.
- (2) A body corporate shall also be deemed to be connected with a director of an ICAV if it is controlled by that director.

(3) For the purposes of this section, a director of an ICAV shall be deemed to control a body corporate if, but only if, the director is, alone or together with any other director or directors of the ICAV, or any person connected with the director or such other director or directors, interested in one-half or more of the equity share capital of that body or entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.

(4) In *subsection (3)*—

(a) “equity share capital”, in relation to an ICAV, means its issued share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

(b) references to voting power exercised by a director shall include references to voting power exercised by another body corporate which that director controls.

### Chapter 3

#### *Other matters*

#### **Fiduciary duties of directors of ICAVs**

**78.** (1) Without prejudice to the provisions of any enactment (including this Act), a director of an ICAV shall owe the duties set out in section 79 (“the relevant duties”) to the ICAV (and the ICAV alone).

(2) The breach by a director of the relevant duties shall not of itself affect—

(a) the validity of any contract or other transaction, or

(b) the enforceability, otherwise than by the director in breach of that duty, of any contract or other transaction by any person,

but nothing in this subsection affects the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit from it.

(3) The relevant duties (other than those set out in section 79 (1)(b) and *(h)*) are based on certain common law rules and equitable principles as they apply in relation to the directors of bodies corporate and shall have effect in place of those rules and principles as regards the duties owed to an ICAV by a director.

- (4) The relevant duties (other than those set out in *section 79 (1)(b)* and *(h)*) shall be interpreted, and the provisions concerned of *section 79* shall be applied, in the same way as common law rules or equitable principles and regard shall be had to the corresponding common law rules and equitable principles in interpreting those duties and applying those provisions.

### Statement of principal fiduciary duties of directors of ICAVs

**79.** (1) A director of an ICAV shall—

- (a) act in good faith in what the director considers to be the interests of the ICAV,
- (b) act honestly and responsibly in relation to the conduct of the affairs of the ICAV,
- (c) act in accordance with the instrument of incorporation of the ICAV and exercise his or her powers only for the purposes allowed by law,
- (d) not use the ICAV's property, information or opportunities for his or her own or anyone else's benefit unless—
  - (i) that is expressly permitted by the ICAV's instrument of incorporation, or
  - (ii) the use has been approved by a resolution of the ICAV in general meeting,
- (e) not agree to restrict the director's power to exercise an independent judgement unless—
  - (i) that is expressly permitted by the ICAV's instrument of incorporation,
  - (ii) the case concerned falls within *subsection (2)*, or
  - (iii) the director's agreeing to such has been approved by a resolution of the ICAV in general meeting,
- (f) avoid any conflict between the director's duties to the ICAV and the director's other (including personal) interests unless the director is released from his or her duty to the ICAV in relation to the matter concerned, whether in accordance with provisions of the ICAV's instrument of incorporation in that behalf or by a resolution of it in general meeting,
- (g) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—

(i) the knowledge and experience that may reasonably be expected of a person in the same position as the director, and

(ii) the knowledge and experience which the director has,

and

(h) in addition to the duty under section 78, have regard to the interests of its members.

(2) If a director of an ICAV considers in good faith that it is in the interests of the ICAV for a transaction or engagement to be entered into and carried into effect, a director may restrict the director's power to exercise an independent judgement in the future by agreeing to act in a particular way to achieve this.

### **Directors to have regard to interests of employees**

**80.** (1) The matters to which the directors of an ICAV are to have regard in the performance of their functions shall include the interests of the ICAV's employees in general, as well as the interests of its members.

(2) Accordingly, the duty imposed by this section on the directors shall be owed by them to the ICAV (and the ICAV alone) and shall be enforceable in the same way as any other fiduciary duty owed to an ICAV by its directors.

### **Register of shareholdings of directors etc.**

**81.** (1) An ICAV shall keep a register showing, in relation to each director and secretary of the ICAV, the number, description and amount of any shares in or debentures of—

(a) the ICAV, or

(b) any other body corporate which is the ICAV's subsidiary or holding company, or a subsidiary of the ICAV's holding company,

which are held by, or in trust for, him or her, his or her spouse or any child of his or hers of which he or she has any right to become the holder (whether on payment or not).

- (2) The register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.
- (3) Subject to *subsection (4)*, where any shares or debentures have to be, or cease to be, recorded in the register in relation to any director or secretary by reason of a transaction entered while he or she is a director or secretary the register shall also show the date of, and price or other consideration for, the transaction.
- (4) Where there is an interval between the agreement for any such transaction and the completion of it, the date shall be that of the agreement.
- (5) The nature and extent of the interest or right in or over any shares or debentures recorded in relation to a director or secretary in the register shall, if he or she so requires, be indicated in the register.
- (6) The ICAV shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.
- (7) Subject to *subsection (8)*, the register shall be kept at the same office as the register of members is kept, and shall be open to inspection during business hours (subject to such reasonable restrictions as the ICAV may by its instrument of incorporation or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) by any member or holder of debentures of the ICAV.
- (8) The register shall also be produced at the commencement of the ICAV's annual general meeting and shall remain open and accessible during the continuance of the meeting to any person attending the meeting.
- (9) Any member or holder of debentures of the ICAV may require a copy of the register, or of any part thereof, on payment of €10, or such less sum as the ICAV may determine.
- (10) The ICAV shall cause any copy so required by any person to be sent to that person within 10 days after the day on which the requirement is received by the ICAV.
- (11) If default is made in complying with *subsection (7)*, the ICAV and any officer of it who is in default commits a category 3 offence.

- (12) If default is made in complying with *subsection (1) or (2)*, or if any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the ICAV and any officer of it who is in default commits a category 3 offence.
- (13) To ensure compliance with the provisions of this section the High Court may by order compel an inspection of the register or direct that the copies required shall be sent to the persons requiring them.
- (14) For the purposes of this section—
- (a) any person in accordance with whose directions or instructions the directors of an ICAV are accustomed to act shall be deemed to be a director of the ICAV;
  - (b) a person shall be deemed to hold, or to have an interest in or right over, any shares or debentures in which the person has an interest jointly or in common with any other person or a limited, reversionary or contingent interest or an interest as the object of a discretionary trust;
  - (c) a person shall be deemed to hold, or to have an interest or right in or over any shares or debentures if a body corporate other than the ICAV holds them or has that interest or right in or over them, and either—
    - (i) that body corporate or its directors are accustomed to act in accordance with the person's directions or instructions; or
    - (ii) the person is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

### **Disclosure for purposes of section 81**

- 82.** (1) It shall be the duty of every director of an ICAV to give notice in writing to the ICAV of such matters relating to himself or herself as may be necessary for the purposes of section 81 .
- (2) If any such notice is not given at a meeting of directors, the director or secretary, as the case may be, giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- (3) A person who fails to comply with this section commits a category 3 offence.

### **Declaration of interest in contracts**

- 83.** (1) It shall be the duty of a director of an ICAV who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the ICAV to declare the nature of his or her interest at a meeting of the directors of the ICAV.
- (2) *Subsection (1)* does not apply in relation to an interest that cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (3) The declaration required by this section to be made by a director shall—
- (a) in the case of a proposed contract, be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she became so interested,
- (b) in a case where the director becomes interested in a contract after it is made, be made at the first meeting of the directors held after the director becomes so interested.
- (4) Subject to *subsection (5)*, for the purposes of this section, a general notice given to the directors of an ICAV by a director to the effect that—
- (a) he or she is a member of a specified ICAV, company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that ICAV, company or firm, or
- (b) he or she is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him or her (within the meaning of *section 77*),
- shall be deemed to be a sufficient declaration of interest in relation to any such contract.
- (5) No such notice such as is mentioned in *subsection (4)* shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- (6) This section applies in relation to a shadow director of an ICAV as it applies in relation to a director of an ICAV, except that the shadow director shall declare his or her interest, not at a meeting of the directors but by a notice in writing to the directors which is either—

(a) a specific notice given before the date of the meeting at which, if he or she had been a director, the declaration would be required to be given, or

(b) a notice which under *subsection (4)* is deemed to be a sufficient declaration of that interest or would fall to be so treated apart from *subsection (5)*,

and *section 88* shall have effect as if the declaration had been made at the meeting in question and had accordingly formed part of the proceedings at that meeting.

(7) A copy of every declaration made and notice given in pursuance of this section shall, within 3 days after the date of the making or giving of it, be entered in a book kept by the ICAV for this purpose.

(8) The book shall be open for inspection without charge by any director, secretary, auditor or member of the ICAV at the registered office of the ICAV and shall be produced at—

(a) every general meeting of the ICAV, and

(b) any meeting of the directors if any director so requests in sufficient time to enable the book to be available at the meeting.

(9) An ICAV shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book kept by it in accordance with *subsection (7)* and shall give the Director such facilities for inspecting and taking copies of the contents of the book as the Director may require.

(10) If an ICAV fails to comply with *subsection (7)*, *(8)* or *(9)* the ICAV and any officer of it who is in default commits a category 3 offence; and if any inspection or production required under any of those subsections is refused, the High Court may by order compel an immediate inspection or production.

(11) Any director who fails to comply with this section commits a category 3 offence.

(12) Nothing in this section shall be taken to prejudice the operation of any enactment or rule of law restricting directors of an ICAV from having any interest in contracts with the ICAV.

(13) Any reference in this section to a contract:

(a) shall be read as excluding a contract the decision as to whether to enter into which is taken otherwise than by the board of directors or a committee of which the director concerned is a member;

(b) shall be read as including a transaction or arrangement whether or not constituting a contract (but subject to a similar limitation as that imposed by *paragraph (a)*).

(14) For the purposes of this section a transaction or arrangement of a kind described in section 75 made by an ICAV for, or for a person connected with, a director of the ICAV shall, if it would not otherwise be so treated (and whether or not prohibited by that section), be treated as a transaction or arrangement in which that director is interested.

### **Breaches of certain duties: liability to account and indemnify**

**84.** (1) Subject to section 85, where a director of an ICAV acts in breach of his or her duty under section 79 (1)(a), (c), (d), (e), (f) or (g), he or she shall be liable to do either or both (as the corresponding common law rule or equitable principle relating to bodies corporate with respect to the matter would have required) of the following things:

(a) account to the ICAV for any gain which he or she makes directly or indirectly from the breach of duty;

(b) indemnify the ICAV for any loss or damage resulting from that breach.

(2) *Subsection (1)* is without prejudice to—

(a) the ICAV's right at common law to claim damages for breach of duty, or

(b) the ICAV's right to make an application seeking the grant of equitable relief,

but *subsection (1)* and this subsection shall not be read as having the combined effect of enabling the ICAV to be afforded more compensation for any damage or injury, or more protection of any proprietary right, than is just and equitable in all the circumstances.

### **Power of court to grant relief to officers of ICAV**

**85.** (1) This section applies to any action for negligence, default, breach of duty or breach of trust against an officer of an ICAV.

- (2) In proceedings to which this section applies the court hearing the proceedings has the power of granting relief provided under *subsection (3)* if it appears to the court that the officer is or may be liable in respect of the negligence, default, breach of duty or breach of trust (the “wrong concerned”) but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with his or her appointment), he or she ought fairly to be excused for the wrong concerned.
- (3) The power referred to in *subsection (2)* is to relieve the officer, either wholly or partly, from his or her liability in respect of the wrong concerned, on such terms as the court may think fit.

### Restrictions on directors of insolvent ICAVs

**86.** (1) The provisions of Chapter 3 of Part 14 of the Companies Act 2014 , and the other provisions of that Act relating to restrictions on directors of an insolvent company (within the meaning of section 818), have effect in accordance with *subsection (2)*.

(2) Those provisions have effect as if—

(a) the following references:

(i) the reference to a company referred to in section 819(6) in the definition of “company” in section 818(1) ;

(ii) the references to a company in section 818(3) ;

(iii) the final 3 references to a company in section 819(1) ;

(iv) the references to an investment company in section 819(5) ;

(v) the references to a company in sections 821(1) (a) and (b), 825(1) and (2) and 836;

(vi) the references to a company in the definition of “restriction” in section 849;

(vii) the references to a company in sections 853(5), 855(1), 858 and 859,

included an ICAV, and

(b) the reference in section 828(2) to the constitution of a company included the instrument of incorporation of an ICAV.

- (3) The provisions of the Companies Act 2014 mentioned in *subsection (1)* apply, subject to necessary modifications and to the specific modifications specified in *subsection (4)*, in relation to directors of an insolvent ICAV as if they were directors of an insolvent investment company.
- (4) The modifications are that—
- (a) references to a company in the definitions of “director of an insolvent company” and “insolvent company” in subsection (1) of section 818 and subsection (2) of that section are to an ICAV,
  - (b) references to the Registrar are to the Bank,
  - (c) the reference to prescribed particulars in sections 819(7) and 823(2), and to the prescribed form and manner in section 819(7), are to particulars, and to the form and manner, specified by the Bank, and
  - (d) the reference in section 823(5) to section 894 is to section 14 of this Act.

### **Disqualification of directors etc.**

**87.** (1) The provisions of Chapter 4 of Part 14 of the Companies Act 2014, and the other provisions of that Act relating to the disqualification of a person from being appointed or acting as a director or other officer, statutory auditor, receiver or liquidator, or being in any way (whether directly or indirectly) concerned or taking part in the promotion, formation or management of a company, have effect in accordance with *subsection (2)*.

- (2) Those provisions have effect as if—
- (a) in the definition of “company” in section 837 after “Act” there were inserted “(including an Irish Collective Asset-management Vehicle)”,
  - (b) in the definition of “relevant requirement” in that section the reference to that Act included this Act and the reference to the Registrar included the Bank,
  - (c) the references to a company within the meaning of section 819(6) in sections 838, 848, 849 and 851 included an ICAV,
  - (d) the reference to that Act in section 839(1) (a) included this Act,
  - (e) in section 840—

- (i) the references to section 149(8) included section 65 (6) of this Act,
  - (ii) the references to section 150(1) included section 66 (1) of this Act,
  - (iii) the reference to section 150(3) included section 66 (3) of this Act, and
  - (iv) the references to the Registrar included the Bank,
- (f) in section 841—
- (i) the references to section 23 included section 11 (3)(a)(ii) of this Act,
  - (i) the references to section 150(2) included section 66 (2) of this Act, and
  - (ii) the reference to section 149(8) included section 65 (6) of this Act,
- (g) in section 842—
- (i) the reference to section 286 included section 114 of this Act,
  - (ii) the reference to section 727 included section 157 of this Act,
  - (iii) the reference to Chapter 1 of Part 12 included *Chapter 1 of Part 11* of this Act, and
  - (iv) the reference to section 733 included section 163 of this Act,
- (h) in section 844(3) the reference to the Registrar included the Bank,
- (i) in section 846 the reference to the Director of Corporate Enforcement included the Bank,
- (j) in section 851(3) the references to the Registrar included the Bank,
- (k) the references in sections 855(1), 858, 859 and 862 to a company included an ICAV,
- (l) in section 863(2), in the case of an offence in relation to an ICAV—
- (i) the reference to the Registrar were a reference to the Bank, and
  - (ii) the reference to prescribed particulars being given at such time and in such form and manner as may be prescribed were to particulars specified by the Bank being given at such time and in such form and manner as may be so specified,

and

(m) in section 864 the references to the Registrar included the Bank.

## PART 5

### Meetings

#### Minutes of meetings

- 88.** (1) An ICAV shall as soon as may be cause minutes of all proceedings of general meetings of the ICAV and all proceedings at meetings of its directors or committees of directors to be entered in books kept for that purpose.
- (2) Any such minute if purporting to be signed by the person chairing the meeting, or by the person chairing the next following meeting, shall be evidence of the proceedings.
- (3) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the ICAV or meeting of directors or committee of directors, then, until the contrary is shown, the meeting shall be deemed to have been duly held and convened, and all proceedings at the meeting to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.
- (4) An ICAV shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with *subsection (1)* and shall give to the Director such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.
- (5) If an ICAV fails to comply with *subsection (1)* or *(4)*, the ICAV and any officer of it who is in default commits a category 3 offence.

#### Annual general meetings

- 89.** (1) Subject to *subsections (2)* and *(4)*, an ICAV shall in each year hold a general meeting (in this Act referred to as an “annual general meeting”) in addition to any other meetings, whether general or otherwise, it may hold in that year.

- (2) If an ICAV holds its first annual general meeting within 18 months after the date on which the registration order made by the Bank in respect of the ICAV comes into operation, *subsection (1)* does not require the ICAV to hold any other meeting as its annual general meeting in the year of its incorporation or in the following year.
- (3) Subject to *subsections (2) and (4)*, not more than 15 months may elapse between the date of one annual general meeting of an ICAV and the date of the next.
- (4) The directors of an ICAV may elect to dispense with the holding of an annual general meeting by giving 60 days' written notice to all of the ICAV's shareholders.
- (5) An election under *subsection (4)* has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.
- (6) But where an election under *subsection (4)* has effect for a year—
  - (a) one or more members of the ICAV holding, or together holding, not less than 10 per cent of the voting rights in the ICAV, or
  - (b) the auditor of the ICAV,may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.
- (7) Annual general meetings of an ICAV shall be convened in accordance with the ICAV's instrument of incorporation.
- (8) If an ICAV fails to comply with this section, the ICAV and any officer of it who is in default commits a category 3 offence.

### Extraordinary general meetings

90. (1) All general meetings of an ICAV, other than annual general meetings, are to be known as "extraordinary general meetings".
- (2) The directors of an ICAV may, whenever they think fit, convene an extraordinary general meeting.

- (3) If at any time in the case of an ICAV there are not sufficient directors capable of acting to form a quorum, any director or member of the ICAV may convene an extraordinary general meeting of the ICAV in the same manner as nearly as possible as that in which meetings may be convened by the directors.

### Convening of extraordinary general meetings by members

- 91.** (1) The rights conferred by *subsection (2)* on a member or members of an ICAV have effect, except where the instrument of incorporation of the ICAV provides otherwise, and the rights conferred by *subsections (3) to (7)* on a member or members of an ICAV (and the corresponding duties on the part of its directors) have effect despite anything in the instrument of incorporation of the ICAV.
- (2) One or more members of an ICAV holding, or together holding, at any time not less than 50 per cent (or such other percentage as may be specified in the instrument of incorporation) of the voting rights in the ICAV may convene an extraordinary general meeting of the ICAV.
- (3) The directors of an ICAV shall, at the request of one or more members holding, or together holding, at the date of the making of the request, not less than 10 per cent of the voting rights in the ICAV, proceed to convene an extraordinary general meeting of the ICAV.
- (4) The request shall state the objects of the meeting and shall be signed by those making the request and deposited at the registered office of the ICAV and may consist of several documents in like form each signed by one or more of those making the request.
- (5) If the directors do not within 21 days after the date of the deposit of the request proceed to convene a meeting to be held within 2 months after that date, those making the request, or any of them representing more than 50 per cent of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held more than 3 months after the date the request was first made.
- (6) Any reasonable expenses incurred by those making the request by reason of the failure of the directors duly to convene a meeting shall be repaid to those making the request by the ICAV and any sum so repaid shall be retained by the ICAV out of any sums due or to become due from the ICAV by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- (7) For the purposes of *subsections (3) to (6)*, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such due notice of it.

- (8) A meeting convened under *subsection (2) or (5)* shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

## PART 6

### Charges and Debentures

#### Chapter 1

#### *Interpretation*

### Definitions

#### 92. (1) In this Part—

“charge”, in relation to an ICAV, means a mortgage or a charge, in an agreement (written or oral), that is created over an interest in any property of the ICAV (and in *section 93 (8)* and *sections 98 to 103* includes a judgment mortgage) but does not include a mortgage or a charge, in an agreement (written or oral), that is created over an interest in—

(a) cash,

(b) money credited to an account of a financial institution, or any other deposits,

(c) shares, bonds or debt instruments,

(d) units in collective investment undertakings or money market instruments, or

(e) claims and rights (such as dividends or interest) in respect of any thing referred to in any of the foregoing paragraphs;

“property”, in relation to an ICAV, includes any assets or undertaking of the ICAV.

- (2) Any exclusion provided in *subsection (1)* to what is defined in that subsection as constituting a “charge” may be varied by order made by the Minister if the Minister considers that it is necessary or expedient to do so in consequence of any Community act adopted after the commencement of this section relating to financial collateral arrangements.

- (3) For the avoidance of doubt, in the case of a mortgage or charge created over both—

(a) an interest in anything specified in any of *paragraphs (a) to (e)* of *subsection (1)*, and

(b) any property, assets or undertaking not falling within any of those paragraphs, the mortgage or charge shall, other than to the extent to which it is created over an interest in anything specified in any of the foregoing paragraphs of *subsection (1)*, be regarded as a charge within the meaning of this Part.

## Chapter 2

### *Registration of charges and priority*

#### **Registration of charges created by ICAVs**

**93.** (1) Every charge created by an ICAV shall be void against the liquidator and any creditor of the ICAV unless either the procedure set out in—

(a) *subsection (3)* (the “one-stage procedure”), or

(b) *subsection (4)* (the “two-stage procedure”),

with respect to the charge’s registration is complied with.

(2) If, in purported compliance with the requirements of this Part as to the taking of steps in that behalf, there is received by the Bank particulars of a charge that omit the required particulars in respect of one or more properties to which the charge relates, *subsection (1)* shall be read as operating to render void (as against the liquidator and any creditor of the ICAV) the charge as it relates to the particular property or properties in respect of which that omission occurs but not otherwise.

(3) The procedure for registration under this subsection referred to in *subsection (1)* as the one-stage procedure consists of the taking of steps so that there is received by the Bank, not later than 21 days after the date of the charge’s creation, particulars, in such form as may be specified by the Bank, of the charge.

(4) The procedure for registration under this subsection referred to in *subsection (1)* as the two-stage procedure consists of the following, namely the taking of steps—

(a) so that there is received by the Bank a notice stating the ICAV’s intention to create the charge (being a notice in such form and containing such particulars as may be specified by the Bank, of the charge), and

- (b) so that, not later than 21 days after the date of the Bank's receipt of the notice under *paragraph (a)* (the "first-mentioned notice"), there is received by the Bank a notice, in such form as may be specified by the Bank, stating that the charge referred to in the first-mentioned notice has been created.
- (5) If the requirement under *paragraph (b)* of *subsection (4)* is not complied with, within the period specified in that paragraph, the notice received under *paragraph (a)* of that subsection in relation to the charge shall be removed by the Bank from the register.
- (6) *Subsection (1)* is without prejudice to any contract or obligation for repayment of the money secured by the charge concerned and when a charge becomes void under that subsection, the money secured by it shall immediately become payable.
- (7) Where a charge comprises property outside the State, such particulars, in such form as may be specified by the Bank, (and, as the case may be, the notice under *subsection (4)(b)*) may be sent for registration under this section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.
- (8) If there is a change among the one or more persons entitled to a charge registered under this Part, the fact of that change having occurred, and particulars of the person or persons now entitled to the charge, may be delivered, in such form as may be specified by the Bank, to the Bank and registered by it.
- (9) Nothing in this section or any other provision of this Part authorises the delivery to the Bank of a deed, or any supplemental document to it, and this Part does not impose or confer any duty or power on the Bank to examine any deed or any supplemental document to it.

### **Duty of ICAV with respect to registration under *section 93* and right of others to effect registration**

- 94.** (1) It shall be the duty of the ICAV that creates the charge to comply with the procedure under *section 93 (3)* or *(4)* with respect to the charge's registration but this is without prejudice to *subsection (2)*.
- (2) Any person interested in the charge may use the procedure under *section 93 (3)* or *(4)* with respect to its registration and the person's using that procedure (and in compliance with *section 93 (3)* or *(4)*) shall have the same effect as if the ICAV had used that procedure (and in compliance with *section 93 (3)* or *(4)*).

- (3) Where such a person uses that procedure (and in compliance with section 93 (3) or (4)), the person may recover from the ICAV the amount of fees properly paid by that person to the Bank in respect of the registration of the charge concerned.

### **Duty of ICAV to register charges existing on property acquired**

- 95.** (1) Where an ICAV acquires any property which is subject to a charge that, if it had been created by the ICAV after the acquisition of the property, would have given rise to the duty under section 93 (1) on the part of the ICAV with respect to the charge's registration, then the ICAV shall have the following duty.
- (2) That duty is to take steps so that there is received by the Bank, not later than 21 days after the date on which acquisition of the property concerned is completed, such particulars of the charge, in such form, as may be specified by the Bank.
- (3) If default is made in complying with this section, the ICAV and any officer of it who is in default commits a category 3 offence.

### **Priority of charges**

- 96.** (1) For the purposes of this section—
- (a) "relevant rule of law" means any applicable rule of law that governs the priority of charges created by a body corporate, and for the avoidance of doubt, any enactment governing the priority of such charges is not encompassed by that expression;
- (b) the reference in subsection (2) to any priority that one charge, by virtue of a person's not having notice of a matter, enjoys over another charge or charges shall be deemed to include a reference to any priority that an advance made on foot of a charge, by virtue of a person's not having notice of a matter, enjoys over a subsequent charge or charges.
- (2) Any relevant rule of law shall stand modified in the manner specified in subsection (3), but not so as to displace any priority that one charge, by virtue of a person's not having notice of a matter, enjoys over another charge or charges.
- (3) That modification is that, for the part of the rule that operates by reference to the time of creation of the 2 or more charges concerned, there shall be substituted a part that operates by reference to—

- (a) the dates of receipt by the Bank of the specified particulars of the 2 or more charges concerned, or
- (b) if the date of receipt by the Bank of the specified particulars of the 2 or more charges is the same, the respective times, on the date concerned, of receipt by the Bank of those particulars.
- (4) References in *subsection (3)* to the date, or time, of receipt of particulars are references to—
- (a) if the procedure under *subsection (3)* of *section 93* is complied with in relation to a particular charge, the date, or time, of receipt by the Bank of the specified particulars, in the specified form, of the charge, or
- (b) if the procedure under *subsection (4)* of *section 93* is complied with in relation to a particular charge, the date, or time, of receipt by the Bank of the notice, in the specified form and containing the specified particulars, in relation to the charge under *paragraph (a)* of that *subsection (4)*.
- (5) *Subsections (2)* and *(3)* shall not affect any agreement between persons in whose favour charges have been created in relation to the priority that those charges shall, as between them, have.
- (6) In relation to particulars of a charge received by the Bank pursuant to *section 93 (3)* or *(4)*, the following provisions apply so far as those particulars consist of particulars of a negative pledge, any events that crystallise a floating charge or any restrictions on the use of any charged asset (and particulars of any such matter are referred to subsequently in this subsection as “extraneous material”):
- (a) the Bank shall not enter in the register under *section 93* particulars of the extraneous material pursuant to that section;
- (b) the fact that the Bank has received the particulars of the extraneous material shall have no legal effect;
- but nothing in the foregoing affects the validity of the receipt by the Bank of the other particulars of the charge.
- (7) In this section “negative pledge” means any agreement entered into by the ICAV concerned and any other person or persons that—
- (a) provides that the ICAV shall not, or shall not otherwise than in specified circumstances—

- (i) borrow moneys or otherwise obtain credit from any person other than that person or those persons,
  - (ii) create or permit to subsist any charge, lien or other encumbrance or any pledge over the whole or any part of the property of the ICAV, or
  - (iii) alienate or otherwise dispose of in any manner any of the property of the ICAV,
- or

(b) contains a prohibition, either generally or in specified circumstances, on the doing by the ICAV of one or more things referred to in one, or more than one, provision of *paragraph (a)*.

- (8) The registration of an investment company as an ICAV by continuation under *Part 8* does not affect the priority of charges created by the investment company.
- (9) The registration of a body corporate as an ICAV by continuation under *Part 9* does not affect the priority of charges created by the body corporate before its registration as an ICAV.

### Registration of judgment mortgages

- 97.** (1) If judgment is recovered against an ICAV and that judgment is subsequently converted into a judgment mortgage affecting any property of the ICAV, the judgment mortgage shall be void against the liquidator and any creditor of the ICAV unless the procedure set out in *subsection (2)* with respect to the judgment mortgage's registration is complied with.
- (2) The procedure for registration under this subsection consists of the taking of steps so that there is received by the Bank, together with the relevant judgment mortgage document, such particulars of the judgment mortgage, in such form, as may be specified by the Bank, not later than 21 days after the following date.
- (3) That date is the date on which notification by the Property Registration Authority of the judgment mortgage's creation is received by the judgment creditor.
- (4) In *subsection (2)* the "relevant judgment mortgage document" means a certified copy of, as appropriate—
- (a) Form 60, 60A or 60B set out in the Schedule of Forms to the Land Registration Rules 2012 ( S.I. No. 483 of 2012 ) as amended by the Land Registration Rules 2013 ( S.I. No. 389 of 2013 ), or

(b) Form 16 set out in the Schedule to the Registration of Deeds (No. 2) Rules 2009 ( S.I. No. 457 of 2009 ),

used for the purposes of converting the judgment concerned into a judgment mortgage.

(5) For the purposes of this section, it shall be presumed, until the contrary is proved, that the judgment creditor received notification, of the judgment mortgage's creation, from the Property Registration Authority on the third day after the date on which that notification is sent by it to the judgment creditor or his or her agent.

(6) If rules are made under section 126 of the Registration of Title Act 1964 or, as the case may be, section 48 of the Registration of Deeds and Title Act 2006 —

(a) replacing a form that is referred to in *subsection (4)(a)* or *(b)*, as appropriate, the reference in that provision to the form shall be read as a reference to the form as so replaced, or

(b) amending a form that is so referred to, the reference in that provision to the form shall be read as a reference to the form as it stands so amended.

## Register of charges

**98.** (1) The Bank shall keep, in relation to each ICAV, a register of the charges requiring registration under this Part, and shall, on payment of the fee (if any) prescribed under section 32E of the Central Bank Act 1942 , enter in the register, in relation to such charges, the following particulars:

(a) without prejudice to *paragraphs (d)* and *(e)*, in the case of a charge created by the ICAV, the date of its creation and—

(i) where the procedure for registration under section 93 (3) is complied with, the date and time of receipt by the Bank under that provision of such particulars of the charge, in such form, as is specified by the Bank, and

(ii) where the procedure for registration under section 93 (4) is complied with, the respective dates and times of receipt by the Bank of the notices under *paragraphs (a)* and *(b)* of that provision in relation to the charge;

(b) without prejudice to *paragraphs (d)* and *(e)*, in the case of a charge existing on property acquired by the ICAV, the date of the acquisition of the property by the ICAV;

(c) without prejudice to *paragraphs (d) and (e)*, in the case of a judgment mortgage, the date of the mortgage's creation and the date and time, in relation to it, of receipt by the Bank, under *section 97 (2)*, of the particulars specified by the Bank in such form as is so specified, together with the relevant judgment mortgage document referred to in that provision;

(d) short particulars of the property charged; and

(e) the persons entitled to the charge.

(2) The register referred to in *subsection (1)* shall be kept in such form as the Bank considers appropriate and shall be made available for inspection free of charge on a website maintained or used by the Bank.

### Certificate of registration

**99.** (1) The Bank shall give a certificate of the registration of any charge registered in pursuance of this Part.

(2) Subject to *subsection (3)*, such a certificate shall be conclusive evidence that the requirements of this Part as to the registration of the charge have been complied with.

(3) To the extent that the particulars of a charge delivered to the Bank in purported compliance with this Part omit the required particulars in respect of one or more properties to which the charge relates, the evidential effect of the certificate provided under *subsection (2)* shall not extend to the particular property or properties in respect of which that omission occurs.

(4) Without prejudice to the generality of the definition, in *section 92*, of that expression, in *subsection (3)* "property" includes an interest in, or right over, property.

### Entries of satisfaction and release of property from charge

**100.** (1) The Bank may exercise the powers under *subsection (2)*, on evidence being given to its satisfaction with respect to any charge registered under this Part—

(a) that the debt in relation to which the charge was created has been paid or satisfied in whole or in part, or

(b) that part of the property charged has been released from the charge or has ceased to form part of the ICAV's property,

and, where the satisfaction or release has not been signed by or on behalf of the chargee, after giving notice to the person who, for the time being, stands registered as the person entitled to such charge or to the judgment creditor, as the case may be.

(2) Those powers are to enter on the register a memorandum—

(a) of satisfaction in whole or in part, or

(b) of the fact that part of the property has been released from the charge or has ceased to form part of the ICAV's property,

as the case may be.

(3) Where the Bank enters such a memorandum of satisfaction in whole, it shall, if required, furnish the ICAV with a copy of it.

(4) The Bank may accept as evidence of a satisfaction or release referred to in *subsection (1) (a) or (b)* a statement in such form as may be specified by the Bank, signed by a director and secretary of the ICAV, or by 2 directors of the ICAV, stating that the satisfaction or release has occurred.

(5) Where a person signs a statement referred to in *subsection (4)* knowing it to be false, the person commits a category 2 offence.

(6) Where a person signs a statement referred to in *subsection (4)* and in doing so did not honestly believe on reasonable grounds that the statement was true, and the High Court considers that the making of that statement—

(a) contributed to the ICAV being unable to pay its debts,

(b) prevented or impeded the orderly winding-up of the ICAV, or

(c) facilitated the defrauding of the creditors of the ICAV,

the High Court, on the application of the liquidator or receiver of the property of, or any creditor or contributor of, the ICAV, may, if it thinks it proper to do so, make the following declaration.

(7) That declaration is that that signatory shall be personally liable, without limitation of liability, for all or such part as the High Court may specify of the debts and other liabilities of the ICAV.

## **Extension of time for registration of charges and rectification of register**

**101.** (1) The High Court may grant the following relief where it is satisfied that the omission to register a charge within the time required by this Part or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction—

(a) was accidental or due to inadvertence or to some other sufficient cause, or

(b) is not of a nature to prejudice the position of creditors or shareholders of the ICAV,

or that on other grounds it is just and equitable to grant that relief in respect of such an omission or misstatement.

(2) That relief is to order, on such terms and conditions as seem to the High Court just and expedient, that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

(3) An application for relief under this section may be made on behalf of the ICAV or any other person interested.

### **Copies of instruments creating charges to be kept**

**102.** (1) An ICAV shall keep a copy of every instrument creating any charge in relation to it and requiring registration under this Part, including, in the case of a judgment mortgage, a copy of the relevant judgment mortgage document that was received by the Bank.

(2) All such copies kept by the ICAV shall be kept at the same place.

(3) Such copies shall be kept at the same office as the register of members is kept and shall be open during business hours to the inspection of any member or creditor of the ICAV without charge.

(4) If default is made in complying with *subsection (1) or (2)*, the ICAV concerned and any officer of it who is in default commits a category 3 offence.

### **Netting of Financial Contracts Act 1995 not to affect registration requirements**

**103.** Nothing in section 4 (1) of the Netting of Financial Contracts Act 1995 affects—

(a) the requirement to register a charge under this Part, or

(b) the consequences of failing to register a charge under this Part.

## Chapter 3

*Provisions as to debentures***Liability of trustees for debenture holders**

**104.** (1) Subject to the provisions of this section, the following provision shall be void, namely, any provision contained—

(a) in a trust deed for securing an issue of debentures, or

(b) in any contract with the holders of debentures secured by a trust deed,

in so far as it would have the effect of exempting a trustee of it from, or indemnifying him or her against, liability for breach of trust where he or she fails to show the degree of care and diligence required of him or her as trustee, having regard to the provisions of the trust deed conferring on him or her any powers, authorities or discretions.

(2) *Subsection (1)* shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release, or

(b) any provision enabling such a release to be given—

(i) on the agreement to the provision of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

**Perpetual debentures**

**105.** A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that the debentures are by those means made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period however long, notwithstanding any rule of law to the contrary.

**Power to re-issue redeemed debentures**

**106.** (1) Where an ICAV has redeemed any debentures then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the instrument of incorporation of the ICAV or in any contract entered into by the ICAV, or
- (b) unless the ICAV has, by passing a resolution to that effect or by some other act, shown its intention that the debentures shall be cancelled,

the ICAV shall have power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

- (2) On a re-issue of redeemed debentures, the person entitled to the debentures shall have the same priorities as if the debentures had never been redeemed.
- (3) Where an ICAV has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the ICAV having ceased to be in debit whilst the debentures have remained so deposited.

### **Specific performance of contracts to subscribe for debentures**

**107.** A contract with an ICAV to take up and pay for any debentures of the ICAV may be enforced by an order for specific performance.

## Chapter 4

### *Prohibition on registration of certain matters affecting shareholders*

### **Registration against ICAV of certain matters prohibited**

**108.** (1) Subject to *subsection (3)*, the Bank has, in relation to any ICAV, no jurisdiction to accept receipt of, or to register in the register—

- (a) an order of any authority (whether judicial or otherwise) affecting a shareholder of the ICAV,  
or
- (b) any notice of the making thereof.

(2) Any jurisdiction of an authority (whether judicial or otherwise) subsisting before the commencement of this section to make an order requiring that there be registered in the register, or that there be received by the Bank—

- (a) an order of that authority affecting a shareholder of an ICAV, or

(b) a notice of the making of an order referred to in *paragraph (a)*,

shall, after that commencement, cease to be exercisable.

(3) Nothing in this section affects the jurisdiction of any authority (whether judicial or otherwise) by virtue of *section 173*.

## PART 7

### Accounts, Reports and Auditing

#### Chapter 1

##### *Accounting records*

### **Obligation to keep adequate accounting records**

**109.** An ICAV shall keep or cause to be kept adequate accounting records.

### **Basic requirements for accounting records**

**110.** (1) For the purposes of this Part, adequate accounting records are those that are sufficient—

(a) correctly to record and explain the transactions of the ICAV,

(b) to enable at any time the assets, liabilities, financial position and profit or loss of the ICAV to be determined with reasonable accuracy,

(c) to enable the directors to ensure that any balance sheet, profit and loss account or income and expenditure account of the ICAV complies with the requirements of this Act, and

(d) to enable the accounts of the ICAV to be readily and properly audited.

(2) The accounting records shall be kept on a continuous and consistent basis, that is to say, the entries in them shall be made in a timely manner and be consistent from one year to the next.

(3) If accounting records are not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating discovery of falsification should it occur.

(4) Without prejudice to the generality of *subsections (1) and (2)*, accounting records kept pursuant to *section 109* shall contain—

- (a) entries from day to day of all sums of money received and expended by the ICAV and the matters in respect of which the receipt and expenditure takes place,
  - (b) a record of the assets and liabilities of the ICAV, and
  - (c) a record of the services provided by the ICAV and of all the invoices relating to them.
- (5) For the purposes of *subsections (1) to (4)*, adequate accounting records shall be deemed to be kept if they comply with those subsections and facilitate the preparation of accounts which show the assets and liabilities of the ICAV.
- (6) The adequate accounting records required to be kept by *section 109* shall be kept—
- (a) either in written form in an official language of the State, or
  - (b) so as to enable the accounting records to be readily accessible and readily convertible into written form in an official language of the State.

### Where accounting records are to be kept

- 111.** (1) Subject to *subsection (2)*, an ICAV's accounting records shall be kept at the registered office of the ICAV or at such other place as the directors think fit.
- (2) If accounting records are kept at a place outside the State, there shall be sent to and kept at a place in the State and be at all reasonable times open to inspection by the directors such information and returns relating to the business dealt with in the accounting records so kept as will—
- (a) disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months, and
  - (b) enable to be prepared in accordance with this Act the ICAV's balance sheet, its profit and loss account or income and expenditure account and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

### Access to accounting records

**112.** An ICAV shall make its accounting records, and any information and returns referred to in *section 111 (2)*, available in written form in an official language of the State at all reasonable times for inspection without charge by the officers of the ICAV and by other persons entitled pursuant to this Act to inspect the accounting records of the ICAV.

### **Retention of accounting records**

**113.** Accounting records required to be kept by *section 109*, and any information and returns referred to in *section 111 (2)*, shall be preserved by the ICAV for a period of at least 6 years after the latest date to which they relate.

### **Accounting records: offences**

**114.** (1) An ICAV that contravenes any of *sections 109 to 113* commits a category 1 offence.

(2) A director of an ICAV who fails to take all reasonable steps to secure compliance by the ICAV with the requirements of any of *sections 109 to 113*, or has by his or her own intentional act been the cause of any default by the ICAV under any of them, commits a category 1 offence.

(3) In any proceedings against a person in respect of an offence under *subsection (2)* consisting of a failure to take reasonable steps to secure compliance by an ICAV with the requirements of any of *sections 109 to 113*, it shall be a defence to prove both of the following:

(a) that the defendant had reasonable grounds for believing and did believe that a competent and reliable person was—

(i) charged with the duty of ensuring that those requirements were complied with, and

(ii) in a position to discharge that duty;

(b) that the discharge of that duty by such competent and reliable person was monitored by the defendant by means of reasonable methods properly used.

### **Personal liability of officers where adequate accounting records not kept**

**115.** (1) Subject to *subsection (2)*, if—

(a) an ICAV that is being wound up and that is unable to pay all of its debts has contravened any of *sections 109 to 113*, and

(b) the High Court considers that such contravention—

- (i) has contributed to the ICAV's inability to pay all of its debts,
- (ii) has resulted in substantial uncertainty as to the assets and liabilities of the ICAV, or
- (iii) has substantially impeded the orderly winding up of the ICAV,

the High Court, on the application of the liquidator or any creditor or contributory of the ICAV, has the following power.

- (2) The power of the High Court is to declare, if it thinks it proper to do so, that any one or more of the officers and former officers of the ICAV who is or are in default shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the High Court, of the debts and other liabilities of the ICAV.
- (3) On the hearing of an application under this section, the person bringing the application may give evidence or call witnesses.
- (4) Where the High Court makes a declaration under *subsection (1)*, it may give such directions as it thinks proper for the purpose of giving effect to the declaration.
- (5) In particular the order providing for the declaration, or a supplemental order, may include provision for making the liability of any person under the declaration (the "respondent") a charge on—
  - (a) any debt or obligation due from the ICAV to the respondent, or
  - (b) any mortgage or charge, or any interest in any mortgage or charge, on any assets of the ICAV held by or vested in—
    - (i) the respondent or any person on the respondent's behalf, or
    - (ii) any person claiming as assignee from or through the respondent or any person acting on the behalf of any such person.
- (6) The High Court may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under *subsection (5)*.

- (7) In *subsection (5)(b)(ii)* “assignee” includes any person to whom or in whose favour, by the directions of the person liable under the declaration, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (8) The High Court shall not make a declaration under this section in respect of a person if it considers that—
- (a) the person took all reasonable steps to secure compliance by the ICAV with *sections 109 to 113*, or
  - (b) the person had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the ICAV who has been formally allocated such responsibility, was—
    - (i) charged with the duty of ensuring that those sections were complied with, and
    - (ii) in a position to discharge that duty.
- (9) This section shall have effect even if the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

## Chapter 2

### *Annual accounts*

#### **Annual accounts**

- 116.** (1) The directors of an ICAV shall prepare accounts for each financial year.
- (2) The accounts shall include the following:
- (a) a balance sheet or statement of assets and liabilities;
  - (b) a detailed income and expenditure account for the financial year;
  - (c) the other information provided for in the Schedule.

- (3) The annual accounts shall give a true and fair view of the assets, liabilities and financial position of the ICAV at the end of the financial year and of the profit or loss of the ICAV for the financial year.
- (4) The annual accounts may be prepared in accordance with—
- (a) generally accepted accounting practice in the State,
  - (b) international financial reporting standards, or
  - (c) subject to *subsection (5)*, an alternative body of accounting standards.
- (5) To the extent that the use of any alternative body of accounting standards does not contravene any provision of this Part, a true and fair view of the assets and liabilities, financial position and profit or loss of an ICAV may be given by the use by the ICAV of those standards in the preparation of its annual accounts.
- (6) In this section “alternative body of accounting standards” means standards that accounts of bodies corporate are to comply with which are laid down by any such body or bodies having authority to lay down standards of that kind in—
- (a) the United States of America,
  - (b) Canada,
  - (c) Japan, or
  - (d) any such other country or territory as may be prescribed by regulations made by the Minister, as may be prescribed by regulations so made.
- (7) Before making regulations under *subsection (6)*, the Minister—
- (a) shall consult with the Bank, and
  - (b) may consult any such other persons as he or she considers appropriate.
- (8) Separate accounts may be prepared and presented in respect of a sub-fund or sub-funds; and all references to an ICAV be read as, where appropriate, referring to the sub-fund or sub-funds in respect of which the separate accounts are to be prepared.

- (9) The requirement for annual accounts prepared in accordance with International Financial Reporting Standards to present fairly the assets, liabilities, financial position, financial performance and cash flow of the ICAV at the end of the financial year is deemed to be equivalent to the true and fair view required to be given by *subsection (3)*.
- (10) If the directors of an ICAV fail to comply with *subsection (1), (2) or (3)* they commit a category 2 offence.
- (11) In this section “international financial reporting standards” means the international financial reporting standards, within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002<sup>1</sup> adopted from time to time by the Commission of the European Union in accordance with that Regulation.

### Accounts to include information about directors

- 117.** (1) In the annual accounts of an ICAV there shall be shown so far as the information is contained in the ICAV’s accounting records or the ICAV has the right to obtain it from the persons concerned—
- (a) the aggregate amount of the directors’ emoluments,
  - (b) the aggregate amount of directors’, or former directors’, pensions, and
  - (c) the aggregate amount of any compensation to directors or former directors in respect of loss of office.
- (2) The amount to be shown under *paragraph (a) of subsection (1)* —
- (a) shall include any emoluments paid to or receivable by any person in respect of his or her services as director of the ICAV or in respect of his or her services, while director of the ICAV, as director of any subsidiary of the ICAV or otherwise in connection with the management of the affairs of the ICAV or any subsidiary of the ICAV, and
  - (b) shall distinguish between emoluments in respect of services as director and other emoluments.
- (3) The amount to be shown under *paragraph (b) of subsection (1)* —

(a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme, but subject to that, shall include any pension paid or receivable in respect of any such services of a director or former director whether to or by him or her or, on his or her nomination or by virtue of dependence on or other connection with him or her, to or by any other person, and

(b) shall distinguish between pensions in respect of services as director and other pensions.

(4) The amount to be shown under *paragraph (c) of subsection (1)* —

(a) shall include any sums paid to or receivable by a director or former director by way of compensation for loss of office as director of the ICAV or for the loss, while director of the ICAV, or on or in connection with ceasing to be a director of the ICAV, of any other office in connection with the management of the ICAV's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary of the ICAV, and

(b) shall distinguish between compensation in respect of the office of director and compensation in respect of other offices.

(5) The amounts to be shown under each paragraph of *subsection (1)* —

(a) shall include all relevant sums paid by or receivable from—

- (i) the ICAV,
- (ii) the ICAV's subsidiaries, and
- (iii) any other person,

except sums to be accounted for to the ICAV or any of its subsidiaries or to former or present members of the ICAV or any of its subsidiaries or any class of those members, and

(b) shall distinguish, in the case of the amount to be shown under *paragraph (c) of subsection (1)*, between the sums respectively paid by or receivable from the ICAV, subsidiaries of the ICAV and persons other than the ICAV and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in *paragraph (a) of subsection (5)*, but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years, or

(b) any sums paid by way of expenses allowance are charged to income tax after the end of the relevant financial year,

those sums shall, to the extent to which the liability is released or not enforced or they are so charged, be shown in the first accounts in which it is practicable to show them and shall be distinguished from the amounts to be shown in those accounts apart from this subsection.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the ICAV to include in the report on the accounts, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) If an ICAV fails to comply with *subsection (1)*, the ICAV and any officer of it who is in default commits a category 3 offence.

(10) In this section, any reference to an ICAV's subsidiary—

(a) in relation to a person who is or was, while a director of the ICAV, a director also, by virtue of the ICAV's nomination (direct or indirect), of any other body corporate shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the ICAV's subsidiary, and

(b) shall, for the purposes of *subsections (2) and (3)*, be taken as referring to a subsidiary at the time the services were rendered, and, for the purposes of *subsection (4)*, be taken as referring to a subsidiary immediately before the loss of office as director of the ICAV.

(11) For the purposes of this section—

(a) references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office;

- (b) “emoluments”, in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax, any contribution paid in respect of the director under any pension scheme, and the estimated money value of any other benefits received by the director otherwise than in cash in so far as they are charged to income tax;
- (c) “pension” includes any superannuation allowance, superannuation gratuity or similar payment;
- (d) “pension scheme” means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions and “contribution”, in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of 2 or more persons if the amount paid in respect of each of them is not ascertainable.

## Chapter 3

### *Directors' reports*

#### **Directors' report**

- 118.** (1) The directors of an ICAV shall for each financial year prepare a report (a “directors' report”) dealing, so far as is material for the appreciation of the state of the ICAV's affairs (and, if it has subsidiaries, of the affairs of the ICAV and its subsidiaries as a group), with—
- (a) any change during the financial year in the nature of the business of the ICAV or of the ICAV's subsidiaries in the classes of business in which the ICAV has an interest whether as a member of another ICAV or a company or otherwise, and
  - (b) the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves.
- (2) The report shall be approved by the board of directors and signed on behalf of the directors by 2 directors.
- (3) The report shall contain a list of bodies corporate in relation to which either of the following conditions is fulfilled at the end of the ICAV's financial year:

- (a) the body corporate is a subsidiary of the ICAV;
  - (b) although the body corporate is not a subsidiary of the ICAV, the ICAV is beneficially entitled to more than 20 per cent in nominal value of its shares carrying voting rights (other than voting rights which arise only in specified circumstances).
- (4) The list referred to in *subsection (3)* shall distinguish between bodies corporate falling within *paragraph (a)* and *paragraph (b)* of that subsection and shall state in relation to each such body corporate—
- (a) its name,
  - (b) where it is incorporated, and
  - (c) the nature of the business carried on by it.
- (5) The report shall contain the following information:
- (a) a fair review of the development and performance of the ICAV's business and of its position and, in relation to its subsidiaries, if any, of the development and performance of their business and of their position, during the financial year ending with the relevant balance sheet date together with a description of the principal risks and uncertainties that they face;
  - (b) particulars of any important events affecting the ICAV or any of its subsidiaries, if any, which have occurred since the end of that year;
  - (c) an indication of likely future developments in the business of the ICAV and of its subsidiaries, if any;
  - (d) in relation to the use by the ICAV and its subsidiaries, if any, of financial instruments and where material for the assessment of the assets, liabilities, financial position and profit or loss of the ICAV and, as the case may be, the group—
    - (i) the financial risk management objectives and policies of the ICAV and the group, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
    - (ii) the exposure of the ICAV and the group to price risk, credit risk, liquidity risk and cash flow risk.

(6) The review mentioned in *subsection (5)(a)*—

(a) shall be a balanced and comprehensive analysis of the development and performance of the ICAV's business and of its position and, in relation to its subsidiaries, if any, of the development and performance of their business and of their position, consistent with the size and complexity of the business, and

(b) to the extent necessary for an understanding of the ICAV's development, performance or position, and that of its subsidiaries, if any, shall include an analysis of financial, and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relevant to environmental and employee matters, and, where appropriate, shall include additional explanations of amounts included in the annual accounts.

(7) If an ICAV fails to comply with this section, the ICAV and any officer of it who is in default commits a category 1 offence.

### Revised directors' reports

**119.** If it appears to the directors of an ICAV that a directors' report of the ICAV did not comply with the requirements of this Act or Bank regulations, they may prepare a revised report.

## Chapter 4

### *Audit*

### Auditor reports on accounts

**120.** (1) An ICAV shall, in respect of its annual accounts, arrange to have an auditor—

(a) audit them, and

(b) make a report on the audit, to the shareholders of the ICAV.

(2) The auditors' report shall state clearly the statutory auditors' opinion as to—

(a) whether the annual accounts give a true and fair view—

(i) in the case of a balance sheet, of the assets, liabilities and financial position of the ICAV at the end of the financial year,

(ii) in the case of a profit and loss account, of the profit or loss of the ICAV for the financial year,

and

(b) whether the annual accounts have been properly prepared in accordance with the relevant financial reporting framework.

(3) A copy of the auditor's report shall be attached to the annual accounts and the directors' report for the financial year of the ICAV to which the report relates.

(4) If an ICAV fails to comply with *subsection (1) or (3)*, the ICAV and any officer of it who is in default commits a category 1 offence.

### **Consideration by auditor of consistency of directors' report with ICAV's accounts**

**121.** In preparing the report in relation to an ICAV required by *section 120 (1)(b)*, the auditor shall—

(a) consider whether the information given in the directors' report relating to the financial year is consistent with the accounts prepared by the ICAV for that year, and

(b) state in the report whether, in the auditor's opinion, that information is, or is not, consistent with those accounts.

### **Duty of auditor in relation to suspected commission of indictable offence**

**122.** (1) Where, in the course of, and by virtue of, carrying out an audit of the accounts of an ICAV, information comes into the possession of the auditor that leads the auditor to form the opinion that there are reasonable grounds for believing that the ICAV, or an officer or agent of it, has committed an indictable offence under this Act, the auditors shall, without delay after having formed such opinion, notify that opinion to the relevant enforcement agency and provide that enforcement agency with details of the grounds on which they have formed that opinion.

(2) Where the auditor of an ICAV notifies the relevant enforcement agency of any matter pursuant to *subsection (1)*, the auditor shall, in addition to performing the obligations under that subsection, if requested by that enforcement agency—

- (a) furnish that enforcement agency with such further information in the auditor's possession or control relating to the matter as that enforcement agency may require, including further information relating to the details of the grounds on which the auditor formed the opinion referred to in that subsection,
  - (b) give that enforcement agency such access to any documents in the auditor's possession or control relating to the matter as that enforcement agency may require, and
  - (c) give that enforcement agency such access to facilities for the taking of copies of, or extracts from, those books and documents as that enforcement agency may require.
- (3) Nothing in this section compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.
- (4) No professional or legal duty to which an auditor is subject by virtue of appointment as an auditor of an ICAV shall be regarded as contravened by, and no liability to the ICAV, its shareholders, creditors or other interested parties shall attach to, an auditor by reason of compliance with an obligation imposed by or under this section.
- (5) The Bank and the Director of Corporate Enforcement are enforcement agencies for the purposes of this section; and in this section "relevant enforcement agency" means—
- (a) for the offences specified in *subsection (1) of section 176*, the Bank;
  - (b) for the offences specified in *subsection (2) of that section*, the Director of Corporate Enforcement;
  - (c) for the offences specified in *subsection (3) of that section*, both the Bank and the Director of Corporate Enforcement.
- (6) If an auditor fails to comply with this section the auditor commits a category 1 offence.

### Eligibility to be auditor

- 123.** (1) No person other than an approved statutory auditor or audit firm under Part 4 of the Audits Regulations shall be eligible for appointment as auditor of an ICAV.
- (2) No person shall be eligible for appointment as auditor of an ICAV if—

- (a) the person is an officer or employee of the ICAV concerned,
  - (b) the person is a partner or employee of such a person, or a partnership of which such a person is a partner, or
  - (c) there exists between the person and the ICAV a connection of any such description as specified in Part 7 of the Audits Regulations.
- (3) For the purposes of *subsection (2)*, an auditor of an ICAV shall not be regarded as an officer or employee of the ICAV.
- (4) Where during a person's term of office as an auditor of an ICAV the person becomes ineligible for appointment to the office, the person shall without delay vacate the office and give notice in writing to the ICAV of having vacated the office by reason of ineligibility.

### **Auditor acting where ineligible**

- 124.** (1) No person shall act as auditor of an ICAV if ineligible for appointment to the office.
- (2) If a person acts as auditor of an ICAV when ineligible for appointment, the person commits a category 2 offence.

### **Appointment of auditors**

- 125.** (1) An ICAV shall, at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- (2) The first auditors of an ICAV may be appointed by the directors of the ICAV at any time before the first annual general meeting of the ICAV and auditors so appointed are to hold office until the conclusion of that meeting.
- (3) Where no appointment is made under *subsection (2)*, the first auditors of any ICAV may be appointed by the ICAV in general meeting.
- (4) On the date on which the holding of an annual general meeting is dispensed with in accordance with *section 89 (4)*, any auditor or auditors appointed in accordance with *subsection (2)* or *(3)* cease to hold office and the directors shall immediately re-appoint the auditor or auditors or appoint a new auditor or auditors.

- (5) The directors of any ICAV which does not hold annual general meetings shall appoint the auditor or auditors.
- (6) Where, in any case, no auditors are appointed as required by this section, the Bank may appoint a person eligible for appointment as auditor under *section 123* to fill the vacancy.

### Casual vacancy

- 126.** (1) The directors of an ICAV, or the ICAV in general meeting, may fill a casual vacancy in the office of auditor.
- (2) While a vacancy in the office of auditor continues, any surviving or continuing auditor may continue to act.

### Partnerships

- 127.** (1) *Subsections (3) to (6)* apply to the appointment, as auditor of an ICAV, of a partnership constituted under the law of the State, or under the law of any country or territory in which a partnership is not a legal person.
- (2) *Subsections (4) to (6)* apply to the appointment, as auditor of an ICAV, of a partnership constituted under the law of any country under which a partnership is a legal person.
- (3) The appointment of an auditor in the case of a partnership is, unless the contrary intention appears, an appointment of the partnership as such and not of the partners.
- (4) Where a partnership ceases, the appointment of the partnership as an auditor is to be treated as extending to—
- (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment, and
  - (b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.
- (5) For the purpose of *subsection (4)*—
- (a) a partnership is to be regarded as succeeding to the practice of another partnership only where the members of the successor partnership are substantially the same as those of the former partnership, and

(b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if succeeding to the whole or substantially the whole of the business of the former partnership.

(6) Where a partnership ceases and no person succeeds to the appointment under *subsection (4)*, the appointment may with the consent of the ICAV be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the ICAV to be treated as comprising the appointment.

### **Auditor's access to records**

**128.** (1) The auditor of an ICAV shall have a right of access at all times to the ICAV's accounting records and is entitled to require from the ICAV's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of an ICAV who knowingly makes to an ICAV's auditor a statement (whether written or oral) which—

(a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, as auditor of the ICAV, and

(b) is misleading, false or deceptive in a material particular,

commits a category 2 offence.

### **Rights of auditors**

**129.** (1) The auditor of an ICAV is entitled—

(a) to receive all such notices of, and other communications relating to, any general meeting of the ICAV as a shareholder of the ICAV is entitled to receive,

(b) to attend any general meeting of the ICAV, and

(c) to be heard at any general meeting on any part of the business of the meeting which is of concern to him or her as auditor.

- (2) The right of an auditor to attend and be heard at a general meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

### Remuneration of auditors

- 130.** (1) The remuneration of an auditor of an ICAV who is appointed by the ICAV in general meeting shall be fixed by the ICAV in general meeting or in such manner as the ICAV in general meeting may decide.
- (2) The remuneration of an auditor of an ICAV who is appointed by the directors or the Bank shall be fixed by the directors or the Bank (and be payable by the ICAV in the case where it is fixed by the Bank).

### Power of competent authority

- 131.** The power of a competent authority, referred to in Regulation 75 of the Audits Regulations, to ensure that its standards include provisions in respect of statutory audit fees is to be exercisable in relation to auditors of Irish collective asset-management vehicles—
- (a) for the same purposes, and
- (b) subject to the same conditions.

### Removal of auditor

- 132.** (1) An ICAV may by resolution remove an auditor from office despite the terms of any agreement between it and the auditor.
- (2) Where a resolution removing an auditor is passed at a general meeting of an ICAV, the ICAV shall, not later than 14 days after the date of the holding of the meeting, notify the Bank in writing of the passing of the resolution.
- (3) Nothing in this section is to be taken as depriving a person removed under it of compensation or damages payable in respect of the termination of the person's appointment as auditor or of any appointment terminating with that as auditor.

### Resolution for removal of auditor

- 133.** (1) A resolution at a general meeting of an ICAV—

(a) removing an auditor before the auditor's period of office expires, or

(b) appointing as auditor a person other than the retiring auditor,

is not effective unless notice of the intention to move it has been given to the ICAV at least 28 days before the date of the meeting at which it is moved.

(2) On receipt of notice of an intended resolution under *subsection (1)*, the ICAV shall without delay send a copy—

(a) in a case within *subsection (1)(a)*, to the person proposed to be removed,

(b) in a case within *subsection (1)(b)*, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed, or the retiring auditor, may make with respect to the intended resolution representations in writing to the ICAV (not exceeding a reasonable length) and request their notification to the shareholders of the ICAV.

(4) The ICAV (except where the representations referred to in *subsection (3)* are received by the ICAV too late for it to do so) shall—

(a) in any notice of the resolution given to the shareholders of the ICAV, state that the representations have been made, and

(b) send a copy of the representations to each of the shareholders whose name appears on the register of shareholders and to whom notice of the meeting is or has been sent.

(5) Where a copy of any representations referred to in *subsection (3)* is not sent out as required because they were received too late or because of the ICAV's default or if, for either of those reasons, any steps required by *subsection (4)(a)* or *(b)* are not taken, the auditor may (without prejudice to a right to be heard orally) require that the representations be read out at the meeting.

- (6) Copies of the representations need not be sent out, the steps required by *subsection (4)(a) or (b)* need not be taken and the representations need not be read out at the meeting where, on the application of the ICAV or any other person claiming to be aggrieved, the High Court is satisfied that the rights conferred by this section are being abused by any person to secure needless publicity for defamatory matter and the High Court may order the costs of the ICAV on such an application to be paid in whole or in part by the auditor, even if the auditor is not a party to the application.

### **Auditor who has been removed**

**134.** (1) An auditor who has been removed from office has, despite the removal, the rights conferred by *section 129* in relation to any general meeting of the ICAV at which—

(a) the auditor's term of office would otherwise have expired, or

(b) it is proposed to fill the vacancy caused by the auditor's removal.

(2) The reference in *section 129* to business which is of concern to a person as auditor is to be construed in relation to an auditor who has been removed from office as a reference to business concerning such an auditor as former auditor.

### **Resignation of auditor**

**135.** (1) An auditor of an ICAV may resign office by depositing a notice in writing to that effect at the ICAV's head office.

(2) A notice referred to in *subsection (1)* is not effective unless it is accompanied by the statement required by *section 138*.

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(4) An ICAV shall, not later than 14 days after the date of the deposit of a notice of resignation, send a copy of the notice to the Bank.

(5) If an ICAV fails to comply with *subsection (4)*, the ICAV and any officer of it who is in default commits a category 3 offence.

### **Statement of circumstances**

- 136.** (1) This section applies where a notice of resignation of an auditor is accompanied by a statement of circumstances which he or she considers ought to be brought to the attention of the shareholders or creditors of the ICAV.
- (2) An auditor may deposit with the notice, referred to in *subsection (1)*, a signed requisition that a general meeting of the ICAV be convened forthwith for the purpose of receiving and considering such explanation of the circumstances connected with his or her resignation as he or she may wish to place before the meeting.
- (3) The ICAV shall, not later than 21 days after the date of the deposit of a requisition, referred to in *subsection (2)*, proceed to convene a meeting for a day not later than 28 days after the date on which the notice convening the meeting is given.
- (4) An auditor may request the ICAV to circulate a statement in writing (not exceeding a reasonable length) of the circumstances connected with the resignation to each of the shareholders of the ICAV whose name appears on the register of shareholders—
- (a) before the general meeting convened pursuant to the requisition, or
  - (b) before any general meeting at which the auditor's term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by the resignation.
- (5) The ICAV (unless the statement is received by it too late for it to do so) shall—
- (a) in any notice or advertisement of the meeting given or made to shareholders of the ICAV, state that the statement has been made, and
  - (b) send a copy of the statement to every shareholder of the ICAV to whom notice of the meeting is, or has been, sent.
- (6) Where a copy of the statement, referred to in *subsection (5)*, is not sent out or provided as required because it was received too late or because of the ICAV's default the auditor may (without prejudice to the right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement, referred to in *subsection (5)*, need not be sent out or provided and the statement need not be read out at the meeting where, on the application of the ICAV or any other person claiming to be aggrieved, the High Court is satisfied that the rights conferred by this section are being abused by any person to secure needless publicity for defamatory matter and the High Court may order the costs of the ICAV on such an application to be paid in whole or in part by the auditor, even if the auditor is not a party to the application.

### **Auditor who has resigned**

**137.** (1) An auditor who has resigned has the rights conferred by *section 129* in relation to any such general meeting of the ICAV as is mentioned in *section 136 (4)(a)* or *(b)*.

(2) The reference in *section 129* to business which is of concern to a person as auditor is to be construed in relation to an auditor who has resigned as a reference to business concerning such an auditor as a former auditor.

### **Requirements consequent on ceasing to hold office**

**138.** (1) Where an auditor of an ICAV ceases for any reason to hold office, he or she shall deposit at the head office of the ICAV a statement of any circumstances connected with his or her ceasing to hold office which he or she considers should be brought to the attention of the shareholders or creditors of the ICAV or, if he or she considers that there are no such circumstances, a statement that there are none.

(2) The statement referred to in *subsection (1)* shall be deposited—

(a) in the case of resignation, along with the notice of resignation,

(b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing auditors, and

(c) in any other case, not later than the end of the period of 14 days beginning with the date on which he or she ceases to hold office.

(3) Where the statement referred to in *subsection (1)* is of circumstances which the auditor considers should be brought to the attention of the shareholders or creditors of the ICAV, the ICAV shall, not later than 14 days after the date of the deposit of the statement, either—

(a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders, or

(b) apply to the High Court,

and, where an application is made under *paragraph (b)*, the ICAV shall notify the auditor.

- (4) Unless the auditor receives notice of an application to the High Court before the end of the period of 21 days beginning with the day on which the statement referred to in *subsection (1)* was deposited, the auditor shall, not later than 7 days after the end of that period, send a copy of the statement to the Bank.
- (5) Where the High Court is satisfied that the auditor is using the statement referred to in *subsection (1)* to secure needless publicity for defamatory matter—
- (a) it shall direct that copies of the statement need not be sent out and that the steps required by Bank rules need not be taken, and
- (b) it may further order the costs of the ICAV on the application to be paid in whole or in part by the auditor even if the auditor is not a party to the application,
- and the ICAV shall, not later than 14 days after the date of the High Court's decision, send a copy of a statement setting out the effect of the order to each of the shareholders whose name appears on the register of members.
- (6) Where the High Court is not so satisfied, the ICAV shall, not later than 14 days after the date of the court's decision, send to each of the shareholders a copy of the auditor's statement and notify the auditor of the court's decision.
- (7) The auditor shall, not later than 7 days after the date of receiving the notice referred to in *subsection (6)* send a copy of the statement referred to in *subsection (1)* to the Bank.
- (8) Where notice of appeal is filed not later than 14 days after the date of the High Court's decision, any reference to that decision in *subsections (5)* and *(6)* is to be construed as a reference to the final determination or withdrawal of that appeal.
- (9) Where a person ceasing to hold office as auditor fails to comply with this section he or she commits a category 2 offence.
- (10) In proceedings for an offence under *subsection (9)*, it is a defence for the person charged to show that he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

## Withdrawal of approval

**139.** Chapter 3 of Part 4 of the Audits Regulations applies in relation to auditors of Irish collective asset-management vehicles.

## PART 8

### Conversions of Investment Company or UCITS to ICAV

#### Conversion of investment company or UCITS to ICAV

- 140.** (1) An investment company or an UCITS constituted as a company with fixed capital or variable capital in accordance with Regulation 4(6) (b) or (c) of the UCITS Regulations may apply to the Bank to be registered as an ICAV by way of continuation.
- (2) The application shall be in such form as may be specified by the Bank and signed by a director of the company.
- (3) The application shall be accompanied by—
- (a) a copy of the certificate of incorporation issued by the Registrar,
  - (b) a copy, certified in such manner as may be specified by the Bank, of—
    - (i) the memorandum of association and the articles of association of the company, and
    - (ii) the instrument of incorporation in respect of the proposed ICAV,
  - (c) a list setting out particulars of the registered office, directors and secretary of the company,
  - (d) a statutory declaration of a director of the company made not more than 28 days before the date on which the application is made to the Bank to the effect that—
    - (i) no petition or other similar proceeding to wind up or liquidate the company has been notified to it and remains outstanding in any place and no order has been notified to the company, or resolution adopted, to wind up or liquidate it in any place,
    - (ii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the company and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the company or its property or any part of its property,

(iii) the company is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the company with creditors in any place,

(iv) the conversion is permitted by and has been approved in accordance with the memorandum of association and articles of association of the company, and

(v) any consented approval to the proposed conversion required by any contract entered into or undertaking given by the company has been obtained or varied,

(e) a declaration of solvency prepared in accordance with section 141,

(f) a schedule of charges or security interests created or granted by the company showing their priority which shall be as it would be were it to remain a company, and

(g) where different from its existing name, notification of the proposed name of the ICAV (other than where the only change is to delete the words “public limited company” or “plc” from the company’s existing name).

(4) The application shall be accompanied by a statutory declaration, in such form as may be specified by the Bank, made by—

(a) a practising solicitor engaged for this purpose by the company, or

(b) a director of the company,

stating that the requirements referred to in *subsection (3)* have been complied with and the Bank may accept such a declaration as sufficient evidence of compliance.

(5) The Bank shall, as soon as is practicable after receipt of an application under *subsection (1)* in relation to which *subsections (2) to (4)* are complied with, publish notice of it in the Iris Oifigiúil.

## Declaration of solvency

**141.** (1) Where an application is made by a company under section 140 a director of the company making the application shall make a statutory declaration stating that he or she has made a full inquiry into its affairs and has formed the opinion that the company is able to pay its debts as they fall due.

(2) A declaration is of no effect unless—

- (a) it is made not more than 28 days before the date on which the application is made,
  - (b) it contains a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration, and, in any case, as at a date that is not more than 3 months before the date of the making of the declaration, and
  - (c) a report made by an independent person under *subsection (4)* is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it.
- (3) The report mentioned in *subsection (2) (c)* shall state whether, in the independent person's opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in *subsection (1)* and the statement of the company's assets and liabilities referred to in *subsection (2)(b)*, are reasonable.
- (4) The independent person shall be a person who, at the time the report is made, is qualified to be auditor of the applicant.
- (5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company is able to pay its debts as they fall due commits a category 2 offence.
- (6) Where the company is wound up within a year after the date on which the application is made and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his or her opinion.

### Registration pursuant to application for conversion

- 142.** (1) Where the Bank receives an application under *section 140* which complies with the requirements of that section, the Bank shall—
- (a) issue a registration order in respect of the registration of the company as an ICAV, and
  - (b) enter in a register the details of charges and securities interests of the ICAV.
- (2) The company shall then make an application to the Registrar in the form prescribed by the Minister for Jobs, Enterprise and Innovation to be de-registered as a company.

- (3) On receipt of an application under *subsection (2)* the Registrar shall issue a certificate of de-registration of the company, shall enter in the register of companies that the company is de-registered and shall forthwith publish notice in the Companies Registration Office Gazette of the following matters:
- (a) the date of the registration of the company as an ICAV under this section;
  - (b) the previous name of the company if different from the name under which it is registered as an ICAV.
- (4) From the date of the registration of the company as an ICAV, the company shall become an ICAV, and shall cease to be a company, for all purposes but this section does not operate—
- (a) to prejudice or affect the identity or continuity of the company as previously established and registered for the period for which it was established and registered in the State,
  - (b) to affect any contract made, resolution passed or any other act or thing done in relation to the company during the period that it was so established and registered,
  - (c) to affect the rights, authorities, functions and liabilities or obligations of the company or any other person, or
  - (d) to render defective any legal proceedings by or against the company.
- (5) In particular—
- (a) the failure of the company to send to the Bank the particulars of a charge or security interest created before the date of registration shall not prejudice any rights which any person, in whose favour the charge was made or security interest created, may have under it, and
  - (b) any legal proceedings that could have been continued or commenced by or against the company before its registration under *subsection (1)* as an ICAV may, despite the registration, be continued or commenced by or against it after registration.
- (6) On the registration of an investment company as an ICAV, the Bank shall immediately authorise it to carry on business.
- (7) On the registration of an UCITS as an ICAV, the UCITS shall continue to be authorised under the UCITS Regulations.

(8) Section 889 of the Companies Act 2014 has effect as if this section were a provision of that Act.

### Further statutory declarations

**143.** Where there is any material change in any of the information contained in the statutory declaration referred to in section 141 (1) after the date of the declaration and before the date of the registration, the director who made that statutory declaration, and any other director who becomes aware of that material change, shall immediately deliver a new statutory declaration to the Bank relating to the change.

### Failure to comply

**144.** (1) Where a company that has become registered as an ICAV under section 142 (1) has failed to comply with this Part the Bank may give notice to the ICAV that, unless it rectifies the failure within 1 month after the date of the giving of notice and confirms that it has rectified the failure, a notice may be published in the Iris Oifigiúil with a view to striking it off the register of ICAVs.

(2) Where the failure mentioned in *subsection (1)* is not rectified within 1 month after the date of the giving of the notice referred to in that subsection, the Bank may publish in the Iris Oifigiúil a notice stating that, at the end of 1 month after the date of that notice, the ICAV will, unless the matter is resolved, be struck off the register of ICAVs and will be dissolved.

(3) At the end of the time mentioned in the notice, the Bank may, unless cause to the contrary is previously shown by the ICAV, revoke the relevant authorisation of the ICAV and strike the ICAV off the register, and shall publish notice thereof in the Iris Oifigiúil, and on that publication, the ICAV shall be dissolved.

## PART 9

### Migration

#### Chapter 1

#### *Migration-in to become ICAV*

### Definitions

**145.** (1) In this Chapter—

“migrating body” means a body corporate which is established and registered under the laws of a relevant jurisdiction and which is a collective investment undertaking;

“registration documents” has the meaning given by [section 146](#);

“relevant jurisdiction”, in relation to a migrating body, means the place, outside the State, prescribed under [subsection \(2\)](#) where the migrating body is established and registered at the time of its application under [section 147](#).

- (2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of “relevant jurisdiction” in [subsection \(1\)](#) where he or she is satisfied that the law of the place concerned makes provision for migrating bodies to continue under the laws of the State or for Irish collective asset-management vehicles to continue under the laws of that place in a substantially similar manner to continuations under [section 147](#).

## Registration documents

**146.** (1) In this Chapter “registration documents”, in relation to a migrating body, means the following documents:

- (a) a copy, certified and authenticated in such manner as may be specified by the Bank, of the certificate of registration or equivalent certificate or document issued with respect to the migrating body under the laws of the relevant jurisdiction;
- (b) a copy, certified and authenticated in such manner as may be specified by the Bank, of the instrument of incorporation, or memorandum and articles, of the migrating body or equivalent constitutive document of the migrating body;
- (c) a list setting out particulars in relation to the directors and secretary of the migrating body in accordance with the provisions of [section 11](#);
- (d) a statutory declaration of a director of the migrating body made, in such manner and form as may be specified by the Bank, not more than 28 days before the date on which an application is made to the Bank under [section 147](#) to the effect that—
  - (i) the migrating body is, as of the date of the declaration, established and registered in the relevant jurisdiction, no petition or other similar proceeding to wind up or liquidate the migrating body has been notified to it and remains outstanding in any place, and no order has been notified to the migrating body or resolution adopted to wind up or liquidate the migrating body in any place,

- (ii) the appointment of a receiver, liquidator or other similar person has not been notified to the migrating body and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating body or its property or any part of its property,
  - (iii) the migrating body is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the migrating body with creditors in any place,
  - (iv) at the date of the declaration the migrating body has served notice of the proposed registration on the creditors of the migrating body,
  - (v) any consent or approval to the proposed registration in the State required by any contract entered into or undertaking given by the migrating body has been obtained or waived, and
  - (vi) the registration is permitted by and has been approved in accordance with the instrument of incorporation, or memorandum and articles, or equivalent constitutive document of the migrating body;
- (e) a declaration of solvency prepared in accordance with *Chapter 3*;
- (f) a schedule of the charges or security interests created or granted by the migrating body that would, if such charges or security interests had been created or granted by an ICAV, have been registerable under *Part 6* and the particulars of such charges and interests as are specified in relation to charges by that Part;
- (g) notification of the proposed name of the migrating body if different from its existing name;
- (h) a copy of the instrument of incorporation which the migrating body has resolved to adopt, which shall be in the Irish language or the English language, which shall take effect on registration under [section 147](#) and which the migrating body undertakes not to amend before registration without the prior approval of the Bank.
- (2) If the original of any of the documents referred to in *subsection (1)* is not written in the Irish language or the English language, then “registration documents” in so far as that expression relates to such a document, means a translation of the document into the Irish language or the English language certified as being a correct translation of it by a person who is competent to so certify.

## Continuation of migrating body

- 147.** (1) A migrating body may apply to the Bank to be registered as an ICAV in the State by way of continuation.
- (2) Where an application is made under *subsection (1)*, the Bank shall not register the migrating body as an ICAV in the State unless it is satisfied that all of the requirements of this Act in respect of the registration and of matters precedent and incidental to the registration have been complied with and, in particular, but without prejudice to the generality of the foregoing, the Bank is satisfied that—
- (a) the migrating body has delivered to the Bank an application for the purpose, in such manner and form as may be specified by the Bank and signed by a director of the migrating body, together with the registration documents,
  - (b) the name or, if relevant, the proposed new name of the migrating body is not, in the opinion of the Bank undesirable or misleading,
  - (c) the migrating body has delivered to the Bank notice of the address of its proposed registered office in the State, and
  - (d) the migrating body has applied to the Bank for a relevant authorisation and the Bank has notified the migrating body that it proposes to grant the relevant authorisation.
- (3) An application under *subsection (1)* shall be accompanied by a statutory declaration, in such form as may be specified by the Bank, made by a solicitor engaged for this purpose by the migrating body, or by a director of the migrating body, and stating that the requirements mentioned in *subsection (2)* have been complied with, and the Bank may accept such a declaration as sufficient evidence of compliance.
- (4) The Bank shall, as soon as is practicable after receipt of the application for registration, publish notice of it in the Iris Oifigiúil.
- (5) Where the Bank notified the migrating body as mentioned in *subsection (2)(d)* the Bank shall issue a registration order in relation to the migrating body by way of continuation of the migrating body as an ICAV under the laws of the State and, if it issues a registration order shall enter in the register of ICAVs the details of charges and securities interests of the migrating body.

- (6) The migrating body shall, as soon as may be after being registered under *subsection (5)*, apply to be de-registered in the relevant jurisdiction.
- (7) The Bank shall enter in the register of ICAVs the date of registration of the migrating ICAV and shall forthwith publish notice in the *Iris Oifigiúil* of the following matters:
- (a) the date of the registration of the migrating body under this section;
  - (b) the relevant jurisdiction;
  - (c) the previous name of the migrating body if different from the name under which it is being registered as an ICAV.
- (8) From the date of registration, the migrating body shall be deemed to be an ICAV formed and registered under this Act and shall continue for all purposes under this Act, and the provisions of this Act shall apply to the migrating body, but this section does not operate—
- (a) to create a new legal entity,
  - (b) to prejudice or affect the identity or continuity of the migrating body as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating body was established and registered in the relevant jurisdiction,
  - (c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating body during the period that the migrating body was so established and registered,
  - (d) to affect the rights, authorities, functions and liabilities or obligations of the migrating body or any other person, or
  - (e) to render defective any legal proceedings by or against the migrating body.
- (9) Without prejudice to the generality of *subsection (8)* —
- (a) the failure of a migrating body to send to the Bank the particulars of a charge or security interest created before the date of registration shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have under it, and

(b) any legal proceedings that could have been continued or commenced by or against the migrating body before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating body after registration.

### **Supplementary provision in relation to *section 147***

- 148.** (1) The migrating body shall notify the Bank, within 3 days after the date of its de- registration in the relevant jurisdiction, of that de-registration in such manner and form as may be specified by the Bank.
- (2) On registration of the migrating body under *section 147 (5)* the Bank shall forthwith authorise the migrating body to carry on business.
- (3) If there is any material change in any of the information contained in the statutory declaration mentioned in *paragraph (d)* of the definition of “registration documents” in *section 146 (1)* after the date of the declaration and before the date of the registration under *section 147*, the director who made that statutory declaration, and any other director who becomes aware of that material change, shall forthwith deliver a new statutory declaration to the Bank relating to the change.
- (4) If the migrating body fails to comply with any provision of *section 147* or this section, the Bank may give notice to the ICAV that, unless it rectifies the failure within 30 days after the date of the giving of notice and confirms that it has rectified the failure, a notice may be published in the Iris Oifigiúil with a view to striking it off the register of ICAVs.
- (5) If the failure mentioned in *subsection (4)* is not rectified within 30 days after the date of the giving of the notice referred to in that subsection, the Bank may publish in the Iris Oifigiúil a notice stating that, at the expiration of 1 month after the date of that notice, the migrating body will, unless the matter is resolved, be struck off the register of ICAVs, and the migrating body will be dissolved.
- (6) At the expiration of the time mentioned in the notice the Bank may, unless cause to the contrary is shown by the migrating body, revoke the relevant authorisation of the migrating body and strike the migrating body off the register of ICAVs and shall publish notice thereof in the Iris Oifigiúil, and, on that publication, the migrating body shall be dissolved.
- (7) For the purposes of this section *section 166* shall apply as if reference in it to *Chapter 1 of Part 11* included a reference to this section and, accordingly, the other provisions of *Chapter 2* of that Part shall apply with any necessary modifications.

## Chapter 2

*De-registration following migration out***Definitions**

**149.** (1) In this Chapter—

“applicant” means an ICAV that applies under *section 150* to be de-registered under *section 151*;

“relevant jurisdiction”, in relation to an ICAV, means the place, outside the State, prescribed under *subsection (2)* in which the ICAV proposes to be registered;

“transfer documents”, in relation to an applicant, means the following documents:

- (a) a statutory declaration, in such form as may be specified by the Bank, of a director of the applicant made not more than 28 days before the date on which the application is made to the Bank to the effect that—
- (i) the applicant will, upon registration, continue as a body corporate under the laws of the relevant jurisdiction,
  - (ii) no petition or other similar proceeding to wind up or liquidate the applicant has been notified to the applicant and remains outstanding in any place, and no order has been notified to the applicant or resolution adopted to wind up or liquidate the applicant in any place,
  - (iii) the appointment of a receiver, liquidator or other similar person has not been notified to the applicant and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the applicant or its property or any part of its property,
  - (iv) the applicant is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the applicant with creditors in any place,
  - (v) the application for de-registration is not intended to defraud persons who are, at the date of the declaration, creditors of the applicant,
  - (vi) any consent or approval to the proposed de-registration required by any contract entered into or undertaking given by the applicant has been obtained or waived, and

- (vii) the de-registration is permitted by the instrument of incorporation of the applicant;
  - (b) a declaration of solvency prepared in accordance with the provisions of *Chapter 3*;
  - (c) a copy of a special resolution of the applicant that approves the proposed de- registration and the transfer of the applicant to the relevant jurisdiction.
- (2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of “relevant jurisdiction” in *subsection (1)*, where he or she is satisfied that the law of the place concerned makes provision for bodies corporate that are substantially similar to applicants under *section 150* to continue under the laws of the State in a substantially similar manner to continuations under *section 147* or for Irish collective asset-management vehicles to continue under the laws of that place.

### De-registration of ICAVs when continued under law of place outside the State

- 150.** (1) An ICAV which proposes to be registered in a relevant jurisdiction by way of continuation as a body corporate may apply to the Bank to be de-registered in the State.
- (2) Where an application is made under *subsection (1)*, the Bank shall not de-register the applicant as an ICAV in the State unless it is satisfied that all of the requirements of this Act in respect of the de-registration and of matters precedent and incidental to de- registration have been complied with and, in particular, but without prejudice to the generality of the foregoing, it is satisfied that—
- (a) the applicant has delivered to the Bank an application for the purpose, in such form as may be specified by the Bank and signed by a director of the applicant, together with the transfer documents,
  - (b) the applicant has paid any levies or fees prescribed under section 32D or 32E of the Central Bank Act 1942 which are due,
  - (c) the applicant complies with any conditions that the Central Bank may impose on the applicant, and
  - (d) the applicant has delivered to the Bank notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction.

- (3) An application under this section shall be accompanied by a statutory declaration, in such form as may be specified by the Bank, made by a solicitor engaged for this purpose by the applicant, or by a director of the applicant, and stating that the requirements mentioned in *subsection (2)* have been complied with, and the Bank may accept such a declaration as sufficient evidence of compliance.
- (4) The Bank shall, as soon as is practicable after receipt of the application for de- registration, publish notice of it in the *Iris Oifigiúil*.
- (5) Where an application is made under *subsection (1)* a person mentioned in *subsection (6)* may apply to the High Court, on notice to the applicant, the Bank and all creditors of the applicant, not later than 60 days after the date of the publication of the notice under *subsection (4)*, for an order preventing the proposal or passage of a resolution specified in *paragraph (c)* of the definition of “transfer documents” in *section 149 (1)* from taking effect in relation to the application, and the High Court may, subject to *subsection (9)* make such an order accordingly.
- (6) The following persons may apply for an order under *subsection (5)* :
- (a) the holders of not less than 5 per cent of the issued share capital of the applicant and who have not voted in favour of the resolution; or
  - (b) any creditor of the applicant.
- (7) Notice of an application for an order under *subsection (5)* may be given to the creditors concerned by publication in at least one national newspaper in the State.
- (8) The Bank and the applicant shall each be entitled to appear and be heard on an application under *subsection (5)* .
- (9) The court may make an order under this section only if it is satisfied that—
- (a) the proposed de-registration of the applicant would contravene the terms of an agreement or arrangement between the applicant and any shareholder or creditor of the applicant, or
  - (b) the proposed de-registration would be materially prejudicial to any shareholder or creditor of the applicant and the interests of shareholders and creditors or both taken as a whole would be materially prejudiced.

(10) An order made under *subsection (5)* shall specify the period in respect of which it shall remain in force.

(11) An order of the court under *subsection (5)* is final and conclusive and not appealable.

### **Provisions supplementary to section 150**

**151.** (1) Unless the High Court orders otherwise, when one or more than one application is made under section 150 (5), a resolution specified in *paragraph (c)* of the definition of “transfer documents” in section 149 (1) in relation to an ICAV shall not take effect until—

(a) where the application or all the applications to the High Court are withdrawn—

(i) the day on which the resolution is passed,

(ii) the day next following the day on which the last outstanding application is withdrawn, or

(iii) the 31st day following the publication of the notice on the creditors under section 150 (7),

whichever is the latest, and

(b) where all applications to the High Court are not withdrawn—

(i) the day on which the resolution is passed,

(ii) the day specified in the order or, if no date is specified in the order, the day next following the day on which the period for which the order is specified to remain in force expires or otherwise ceases to be in force, or

(iii) the day next following the decision of the High Court,

whichever is the latest.

(2) When the applicant is registered as a body corporate under the laws of the relevant jurisdiction, it shall give notice, in such form as may be specified by the Bank, to the Bank of that fact within 3 days after the date of its becoming so registered, including its new name (if any), and as soon as practicable after receiving that notice, the Bank shall revoke the applicant’s relevant authorisation and issue a certificate of de- registration of the applicant.

- (3) The Bank shall enter in the register of ICAVs the date of the de-registration of the applicant and shall, within 7 days of the date of issue of the certificate under *subsection (2)*, publish in Iris Oifigiúil notice of the following matters:
- (a) the date of the de-registration of the applicant under this section;
  - (b) the relevant jurisdiction;
  - (c) the new name of the applicant if different from the name under which it was registered as an ICAV.
- (4) From the date of registration of the applicant in the relevant jurisdiction, it shall cease to be an ICAV for all purposes of this Act and shall continue for all purposes as a body corporate under the laws of the relevant jurisdiction, but this section does not operate—
- (a) to create a new legal entity,
  - (b) to prejudice or affect the identity or continuity of the applicant as previously constituted under the laws of the State for the period that the applicant was so constituted,
  - (c) to affect any contract made, resolution passed or any other act or thing done in relation to the applicant during the period that the applicant was constituted under the laws of the State,
  - (d) to affect the rights, authorities, functions and liabilities or obligations of the applicant or any other person, or
  - (e) to render defective any legal proceedings by or against the applicant.
- (5) Without prejudice to the generality of *subsection (2)* any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration under this Chapter may, notwithstanding the de-registration, be continued or commenced by or against the applicant after registration in the relevant jurisdiction.

## Chapter 3

### *Declaration of solvency*

#### **Statutory declaration as to solvency**

- 152.** (1) Where an application is made under *Chapter 1* or *2* a director of the migrating body or ICAV making the application shall make a statutory declaration, in such form as may be specified by the Bank, stating that he or she has made a full inquiry into its affairs and has formed the opinion that the migrating body or ICAV is able to pay its debts as they fall due.
- (2) A declaration under *subsection (1)* shall have no effect for the purposes of this Chapter unless—
- (a) it is made not more than 28 days before the date on which the application is made to the Bank,
  - (b) it contains a statement of the migrating body's or ICAV's assets and liabilities as at the latest practicable date before the date of the making of the declaration and in any event at a date not more than 3 months before the date of that making, and
  - (c) a report made by an independent person under *subsection (3)* is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it.
- (3) The report mentioned in *subsection (2) (c)* shall state whether, in the independent person's opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in *subsection (1)* and the statement of the migrating ICAV's or applicant's assets and liabilities referred to in *subsection (2)(b)*, are reasonable.
- (4) For the purposes of *subsection (3)*, the independent person shall be a person who, at the time the report is made, is—
- (a) in the case of an application under *Chapter 1*, qualified to be the auditor of the migrating body under the laws of the relevant jurisdiction, and
  - (b) in the case of an application under *Chapter 2*, qualified to be the auditor of the ICAV.
- (5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating body or ICAV is able to pay its debts as they fall due commits a category 2 offence.
- (6) Where the migrating body or ICAV is wound up within 1 year after the date on which the application is made to the Bank and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his or her opinion.

## PART 10

### Receivers and Winding Up

#### Chapter 1

##### *Receivers*

#### **Receivers**

**153.** (1) The provisions of Part 8 of the Companies Act 2014 , and the other provisions of that Act relating to receivers, apply, subject to the necessary modifications and to the specific modifications specified in *subsection (2)*, in relation to an ICAV as if it were an investment company.

(2) The modifications are the following:

- (a) references to the Registrar are to the Bank;
- (b) references to the prescribed form are to such form as may be specified by the Bank;
- (c) references in section 431(1)(e) to such further or other information as may be prescribed are to such further or other information as may be specified by the Bank;
- (d) in section 439(4) the reference to section 220 is to section 77 of this Act and paragraphs (b) and (c) are omitted;
- (e) the references in section 447 to the Director of Corporate Enforcement include the Bank.

#### Chapter 2

##### *Winding up*

#### **Winding up**

**154.** (1) The provisions of Part 11 of the Companies Act 2014 , and the other provisions of that Act relating to the winding up of companies (including, in particular, provisions about summary approval procedure) apply, subject to the necessary modifications and the specific modifications specified in *subsection (2)*, in relation to an ICAV as if it were an investment company.

(2) The modifications are the following:

- (a) references to the Registrar are to the Bank;

(b) references to the constitution of a company are to the instrument of incorporation of an ICAV;

(c) in the definition of “connected person” in section 559(1) and in 629(5) the reference to section 220 is to section 77 of this Act and paragraph (b) is omitted;

(d) in the table to section 567—

(i) the reference to section 286(3) is to section 114 (1) of this Act;

(ii) the reference to section 609 is to section 115 of this Act;

(e) the references in sections 569(2) and 571(3) to section 212 are to section 55 of this Act;

(f) the reference in section 595(5) to that Act is to this Act;

(g) the words “into his or her custody or” in section 596 and paragraph 9 of the Table to section 627 are omitted;

(h) sections 600 and 609 are omitted;

(i) section 636 has effect as if—

(i) the reference in subsection (3) to Part 4 were to section 91 of this Act,

(ii) for subsection (5) there is substituted a requirement that notice of a meeting given by a member, liquidator or contributory under subsection (3) comply with any requirements specified in the ICAV’s instrument of incorporation, and

(iii) the reference in subsection (6) to the Companies Act 2014 is omitted;

(j) the reference in section 656(2) to section 173 is to section 52 of this Act;

(k) in section 673—

(i) in subsection (1), for “hands of the liquidator” there is substituted “hands of the depositary or trustee within the meaning of the UCITS Regulations, to be under the control of the liquidator,”, and

(ii) in subsection (3), for “to the liquidator” there is substituted “to the depositary or trustee within the meaning of the UCITS Regulations, to be under the control of the liquidator,”.

## PART 11

## Strike Off and Restoration

## Chapter 1

*Strike off of ICAV***When Bank may strike ICAV off register**

**155.** (1) Except in the case of an application by an ICAV to be struck off the register of ICAVs, the Bank may strike an ICAV off the register of ICAVs if—

- (a) the ICAV is not an authorised ICAV,
- (b) there exists one or more of the grounds for striking off set out in section 156, and
- (c) the Bank has followed the procedure set out in *sections 157, 158, 160 and 163(1)*.

(2) In the case of an application by an ICAV to be struck off the register of ICAVs, the Bank may strike the ICAV off the register of ICAVs if—

- (a) the ICAV is not an authorised ICAV,
- (b) the conditions for striking off set out in section 161 have been satisfied, and
- (c) the Bank has followed the procedure set out in *sections 162 and 163(2)*.

**Grounds for involuntary strike off**

**156.** The grounds referred to in section 155 (1)(b) are:

- (a) the Bank has reasonable cause to believe that the ICAV no longer complies with section 13;
- (b) the ICAV, not being authorised under the UCITS Regulations, has not applied for authorisation under section 18 by the end of the period of 12 months since the date of the coming into operation of a registration order in relation to the ICAV;
- (c) the ICAV is being wound up and the Bank has reasonable cause to believe that no liquidator is acting;

(d) the ICAV is being wound up and the Bank has reasonable cause to believe that the affairs of the ICAV are fully wound up and that the returns required to be made by the liquidator have not been made for a period of 6 consecutive months;

(e) there are no persons recorded by the Bank as being current directors of the ICAV.

### Bank's notice to ICAV of intention to strike it off register

**157.** (1) The Bank may give notice in accordance with section 158 of the Bank's intention to strike an ICAV off the register of ICAVs on a ground set out in any of *paragraphs (a) to (e)* of section 156.

(2) The Bank shall send the notice—

(a) except where *paragraph (b)* applies, to the ICAV,

(b) if the ground for striking off is that set out in section 156 (c) or (d) and an individual is recorded by the Bank as the liquidator of the ICAV, to the liquidator.

(3) The Bank shall also send a copy of the notice to such persons, if any, as are recorded by the Bank as being current directors of the ICAV but non-compliance with this subsection does not affect the validity of a notice that otherwise complies with *subsection (1)*.

(4) Instead of giving a notice under *subsection (1)*, the Bank may publish a notice in Iris Oifigiúil containing the information required by section 158 if no notice of the situation of the registered office of the ICAV has been given to the Bank as required by *sections 7 and 11(2)*.

### Contents of Bank's notice to ICAV

**158.** (1) The Bank's notice under section 157 shall—

(a) state that the issue of the notice is the first step in a process that may lead to the ICAV being struck off the register of ICAVs,

(b) state the ground or grounds for striking off being invoked by the Bank,

(c) state that the ICAV will be dissolved if it is struck off the register of ICAVs,

(d) specify the remedial step,

(e) specify the date on or before which the remedial step must be taken, and

(f) state that failure to take the remedial step on or before the date so specified may result in the Bank giving public notice of an intention to strike the ICAV off the register of ICAVs.

(2) The date to be specified for the purposes of *subsection (1)(e)* shall be a date falling not less than 28 days after the date of the notice.

### Meaning of remedial step

**159.** For the purposes of *sections 158, 160 and 163*, the remedial step is whichever of the following applies:

- (a) in the case of the ground for striking off set out in *section 156 (a)*, having brought itself into compliance with *section 13*;
- (b) in the case of the ground for striking off set out in *section 156 (b)*, having applied for or been granted authorisation under *section 18*;
- (c) in the case of the ground for striking off set out in *section 156 (c) or (d)*, having provided to the Bank the details of the liquidator and of up to date periodic statements having been furnished;
- (d) in the case of the ground for striking off set out in *section 156 (e)*, having given notification to the Bank under *section 65 (6)* of the appointment of at least 2 directors of the ICAV.

### Public notice of intention to strike ICAV off register

**160.** (1) If the Bank has given a notice under *section 157* and the remedial step has not been taken on or before the date specified in that notice for the purposes of *section 158 (1)(e)*, the Bank may, by publishing a notice in *Iris Oifigiúil* that complies with *subsection (2)*, give public notice of the Bank's intention to strike the ICAV off the register of ICAVs.

(2) The notice shall—

- (a) specify the ground for striking the ICAV off,
- (b) specify the remedial step,
- (c) specify the date on or before which the remedial step must be taken, and
- (d) state that, unless that remedial step is taken on or before the date so specified, the Bank may strike the ICAV off and, if the Bank does so, the ICAV will be dissolved.

- (3) The date to be specified for the purposes of *subsection (2)(c)* shall be a date falling not less than 28 days after the date of publication of the notice.

### Conditions for voluntary strike off

**161.** (1) An ICAV may apply to the Bank to be struck off the register of ICAVs if the following conditions are satisfied:

- (a) the circumstances relating to the ICAV are such as to give the Bank reasonable cause to believe that it has never carried on business or has ceased to carry on business;
- (b) the ICAV has, within 3 months before the date of the application, by special resolution—
  - (i) resolved to apply to the Bank to be struck off on the ground that it has never carried on business or has ceased to carry on business, and
  - (ii) resolved that pending the determination of its application to be struck off (or, should it sooner occur, the cancellation, at its request, of this process), the ICAV will not carry on any business or incur any liabilities;
- (c) the ICAV has delivered to the Bank a certificate, in such form as may be specified by the Bank and signed by each director, certifying that as at the date of the application—
  - (i) the amount of any assets of the ICAV does not exceed €150,
  - (ii) the amount of any liabilities of the ICAV (including contingent and prospective liabilities) does not exceed €150, and
  - (iii) the ICAV is not a party to ongoing or pending litigation;
- (d) the Bank has received from the Revenue Commissioners written confirmation dated not more than 3 months before the date on which the Bank receives the application that the Revenue Commissioners do not object to the ICAV being struck off the register of ICAVs;
- (e) the ICAV has caused an advertisement, in such form as may be specified by the Bank, of its intention to apply to be struck off to be published within 30 days before the date of the application in at least 1 daily newspaper circulating in the State.

(2) Where an application under this section by an ICAV to be struck off the register of ICAVs is made within one year after the date on which the ICAV has changed its name or its registered office (or both), then, as the case may be—

(a) the former name of the ICAV, as well as the existing name of the ICAV,

(b) the former address, as well as the current address, of the ICAV's registered office, or

(c) both its former name and the former address of its registered office, as well as the existing name of the ICAV and the current address of its registered office,

shall be stated in the advertisement referred to in *subsection (1)(e)*.

### Public notice in case of voluntary strike off

**162.** (1) As soon as practicable after the receipt of an application by an ICAV to be struck off that satisfies the conditions set out in *section 161* the Bank shall, by publishing a notice in *Iris Oifigiúil* that complies with *subsection (2)*, give public notice of the Bank's intention to strike the ICAV off the register of ICAVs.

(2) The notice shall—

(a) state that the ICAV has applied to be struck off,

(b) state—

(i) that any person may deliver to the Bank an objection to the striking off of the ICAV in such form as may be specified by the Bank, and

(ii) that any such objection must be confined to the ground that one or more of the conditions set out in *section 161 (1)* have not been satisfied,

(c) specify the period within which such an objection may be delivered to the Bank, and

(d) state that, unless the Bank has received—

(i) an objection to the striking-off of the ICAV within that period, being an objection that the Bank sustains, or

(ii) a request for the cancellation of the process of strike off in accordance with *subsection (4)*,

the Bank may strike the ICAV off the register of ICAVs and, if the Bank does so, the ICAV will be dissolved.

- (3) The period to be specified for the purposes of *subsection (2)(c)* shall be the period ending 90 days after the date of publication of the notice.
- (4) Within the period specified for the purposes of *subsection (2)(c)*, the ICAV may request of the Bank, by delivering to the Bank a notice in that behalf in such form as may be specified by the Bank, the cancellation of the process of its being struck off the register of ICAVs.

### Striking off (involuntary and voluntary cases) and dissolution

**163.** (1) If the Bank has given a notice under *section 160* and the remedial step has not been taken on or before the date specified in that notice for the purposes of *subsection (2)(c)* of that section, the Bank may strike the ICAV off the register of ICAVs.

(2) If the Bank has given a notice under *section 162* and—

(a) no objection referred to in *subsection (2)(b)* of that section has been delivered to the Bank within the period specified in that notice for the purposes of *subsection (2)(c)* of that section or the Bank is of opinion that there is no reasonable basis to such an objection that has been so delivered, and

(b) the ICAV has not requested, in accordance with *subsection (4)* of that section, the cancellation of the process of its being struck off,

the Bank may strike the ICAV off the register of ICAVs.

(3) The Bank shall publish in *Iris Oifigiúil* a notice of the striking of an ICAV off the register of ICAVs.

(4) The ICAV is dissolved on the date of publication by the Bank of the notice in the *Iris Oifigiúil* of its being struck off and that date is referred to subsequently in this Part as the “date of dissolution”.

### Effect of removal and dissolution

**164.** (1) The liability, if any, of an officer or member of an ICAV that has been dissolved under *section 163 (4)* shall continue and may be enforced as if the ICAV had not been dissolved.

(2) Nothing in this section or in *section 163* shall affect the power of the High Court to wind up an ICAV that has been struck off the register of ICAVs or dissolved under that section.

(3) For the purposes and the purposes only of—

(a) an application for the restoration of the ICAV to the register of ICAVs under section 167 or 168, or

(b) in so far as is necessary for the making of such an application (or the doing of anything required by or under Chapter 2 to be done consequent on the making of it),

an ICAV shall be deemed not to have been dissolved under section 163.

(4) *Subsection (3)* shall not be read as authorising the dealing with, or the exercising of control over, any property that has become the property of the State pursuant to Part III of the State Property Act 1954.

### Power of Bank to obtain information

**165.** (1) Where an ICAV has been struck off the register of ICAVs under section 163 on any of the grounds set out in section 156 (a) or (b), the Bank may, by notice to the directors of the ICAV, require those persons to produce to the Bank a statement of affairs of the ICAV in accordance with this section.

(2) The persons to whom a notice is sent under *subsection (1)* shall, within the period specified in the notice in that behalf, produce to the Bank a statement of affairs of the ICAV that complies with *subsection (3)*.

(3) The statement of affairs shall—

(a) be in such form as may be specified by the Bank,

(b) be verified by an affidavit,

(c) contain the following information in respect of the ICAV as at the date of dissolution:

(i) particulars of its assets, debts and liabilities;

(ii) the names and addresses of its creditors;

(iii) particulars of securities given by the ICAV, including the name of the secured creditor in each case and the date on which the security was given;

(iv) such further or other information as may be specified by the Bank or that the Bank may reasonably require.

(4) On the application of the Bank, the High Court may require a person who has made a statement under *subsection (2)* to appear before it and answer on oath any question relating to the content of the statement.

(5) A person who fails to comply with *subsection (2)* commits a category 3 offence.

## Chapter 2

### *Restoration of ICAV to register*

#### **Application of Chapter**

**166.** This Chapter applies to an ICAV that has been struck off the register of ICAVs under *Chapter 1*.

#### **Restoration on application to Bank**

**167.** (1) On an application by a person specified in *subsection (3)*, the Bank may restore an ICAV to the register of ICAVs if—

- (a) the Bank has reasonable cause to believe that the strike off of the ICAV has disadvantaged the applicant,
- (b) the application is made in the form specified by the Bank,
- (c) the application is received by the Bank within the period of 12 months after the date of dissolution of the ICAV, and
- (d) the requirements of *subsection (2)* have been satisfied within the period of 15 months after the date of dissolution of the ICAV.

(2) The requirements referred to in *subsection (1)(d)* are the following:

- (a) the Bank has received written confirmation from the Minister and the Revenue Commissioners that they have no objection to the ICAV being restored to the register of ICAVs under this section;
- (b) the Bank is satisfied that no notification required by *section 65 (6)* remains outstanding in relation to the ICAV.

- (3) The Bank may restore an ICAV to the register of ICAVs on the application of a person who was a member or an officer of the ICAV at the date of its dissolution.
- (4) On the registration of an application under this section and on payment of such fee as may be prescribed under section 32E of the Central Bank Act 1942, the Bank shall restore the ICAV to the register of ICAVs and the ICAV shall be deemed to have continued in existence as if it had not been struck off.
- (5) Subject to any order made by the High Court in the matter, the restoration of an ICAV to the register of ICAVs under this section shall not affect the rights and liabilities of the ICAV in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the ICAV between the date of its dissolution and the date of restoration.

### Restoration on application to High Court

**168.** (1) On an application in accordance with section 169 by a person specified in subsection (2), the High Court may order that an ICAV that has been struck off the register of ICAVs be restored to the register of ICAVs if—

- (a) the striking off of the ICAV has disadvantaged the applicant,
- (b) the application is made within the period of 2 years after the date of dissolution of the ICAV,  
and
- (c) it is just and equitable to do so.

(2) The High Court may make the order on the application of—

- (a) the ICAV,
- (b) a creditor of the ICAV,
- (c) a person who was a member or an officer of the ICAV at its date of dissolution, or
- (d) a person who, at the date of its dissolution, had an entitlement (disregarding any right of the directors to decline to register the person as such) to be registered as a member of the ICAV by virtue of—
  - (i) the execution, in the person's favour, of an instrument of transfer of a share, or
  - (ii) the transmission, by operation of law, to the person of a right to a share.

- (3) Subject to a supplementary order made under section 172 (c), the ICAV shall be deemed to have continued in existence as if it had not been struck off the register of ICAVs upon the Bank receiving a certified copy of the order under subsection (1) within 28 days after the date of its perfection.

### **Requirements for application to High Court under section 168**

- 169.** (1) An application under section 168 shall be made on notice to the Bank, and the Revenue Commissioners.
- (2) In the case of an application under section 168 by a creditor, the application shall in addition be made on notice to—
- (a) the Bank,
  - (b) such officers of the ICAV at the date of dissolution whose names are known, or ought reasonably to be known, by the creditor, and
  - (c) such other members or officers of the ICAV at the date of dissolution as the Bank, the Revenue Commissioners, upon being notified of the application, indicate in writing should be joined as notice parties to the application.

### **Terms of High Court order on application under section 168**

- 170.** (1) In making an order under section 168 on the application of a member or an officer of the ICAV, the High Court shall, unless reason to the contrary is shown to the satisfaction of the High Court, make it a term of the order that the order shall not have effect unless, within a specified period, the ICAV appoints 2 directors and delivers to the Bank the notification and consent required by section 65 (6) and (8).
- (2) For the avoidance of doubt, subsection (1) requires, unless reason to the contrary there mentioned is shown, the order of the High Court to specify that a thing set out in subsection (1) is to be done (save where it has already been done) notwithstanding that the ground on which the ICAV had been struck off the register of ICAVs did not relate to that thing.
- (3) In making an order under section 168 on the application of a creditor of the ICAV, the High Court shall direct that, within a specified period (save where it has already been done) such specified members or officers take all reasonable steps to ensure that the ICAV appoints at least 2 directors and delivers to the Bank the notification and consent required by section 65 (6) and (8).

- (4) For the avoidance of doubt, *subsection (3)* requires the order of the High Court to specify that a thing set out in that subsection is to be done (save where it has already been done) notwithstanding that the ground on which the ICAV had been struck off the register of ICAVs did not relate to that thing.
- (5) In making an order under *section 168* on the application of a creditor of the ICAV, the High Court may award the applicant the costs of the application against the ICAV.

### High Court order for restoration on application of Bank

- 171.** (1) On an application by the Bank in accordance with *subsection (2)*, the High Court may order that an ICAV that has been struck off the register of ICAVs be restored to the register of ICAVs if—
- (a) the application is made within the period of 2 years after the date of dissolution of the ICAV, and
  - (b) it is just and equitable to do so.
- (2) An application under this section shall be made on notice to each person who, to the knowledge of the Bank, was an officer of the ICAV at the date of its dissolution.
- (3) On the making of the order, the ICAV shall be deemed to have continued in existence as if it had not been struck off.
- (4) In making an order under this section, the High Court may award the Bank the costs of the application against the ICAV restored to the register of ICAVs.

### Supplementary High Court orders

- 172.** In ordering that an ICAV be restored to the register of ICAVs under *section 168* or *171*, the High Court may do any of the following:
- (a) except to the extent that the High Court makes an order under *paragraph (c)*, give such directions as it thinks fit for placing the ICAV and all other persons as nearly as possible in the same position as if the ICAV had not been struck off the register of ICAVs;
  - (b) direct the ICAV to change its name if the name of the ICAV is too similar to the name of another ICAV already on the register of ICAVs;

- (c) if and to the extent that it thinks fit, order that the officers of the ICAV, or any one or more of them as specified in the order, shall be liable for a debt or liability incurred by or on behalf of the ICAV during the period when it stood struck off the register of ICAVs;
- (d) make any other order that it thinks fit.

## PART 12

### Investigations, Compliance and Enforcement

#### Investigations

**173.** (1) The provisions of Part 13 of the Companies Act 2014, and the other provisions of that Act relating to investigations of companies, apply, subject to necessary modifications and the specific modifications specified in *subsection (2)*, in relation to an ICAV as if it were an investment company.

(2) The modifications are the following:

- (a) references to a body corporate include a company;
- (b) the references in sections 752 to 757 to agents include depositaries and trustees within the meaning of the UCITS Regulations;
- (c) in section 755(2)(a) for the words after “agreement” there is substituted a reference to a transaction within section 75 (1) of this Act and in section 755(4) for the reference to section 220 there is substituted a reference to section 77 of this Act;
- (d) the duty in section 759(1) to provide a copy of an inspector’s report to the Director of Corporate Enforcement includes a duty to forward a copy to the Bank (so that section 759(2)(b)(vi) does not apply);
- (e) the reference in section 763(1) to Chapter 5 of Part 5 is to section 82 of this Act;
- (f) the references to the Registrar in sections 765(4) and 770 are to the Bank;
- (g) the reference in section 785(4) to section 286 is to section 114 of this Act.

#### Compliance orders

**174.** (1) This section applies if an ICAV or an officer of an ICAV—

- (a) has failed to comply with a provision of this Act, and

- (b) the ICAV or officer has failed to remedy the default within 14 days (or such longer period as may be specified in the notice) after the date of service by any person referred to in *subsection (3)* on the ICAV or officer of a notice requiring the ICAV or officer to remedy the default.
- (2) In any case to which this section applies, the High Court, on the application of a person specified in *subsection (3)*, may order the ICAV or officer in default to remedy the default within such time as the High Court specifies.
- (3) The High Court may make the order only on the application of one of the following:
- (a) any member of the ICAV;
  - (b) any creditor of the ICAV;
  - (c) the Director of Corporate Enforcement.
- (4) In making an order under *subsection (2)*, the High Court may order that the ICAV or the officer responsible for the default pay all costs of and incidental to the application.
- (5) Subject to *subsection (6)*, no order may be made under this section in relation to a default that, in the opinion of the High Court, constitutes a wrong done to the ICAV an action in respect of which, under the general law, is maintainable by the ICAV alone, as distinct from another by derivative proceedings.
- (6) *Subsection (5)* does not apply if the facts constituting the default in question amount, in the opinion of the High Court, to the commission of an offence.
- (7) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties (including restriction or disqualification) on an ICAV or its officers in respect of the default in question.
- (8) In this section “officer” means director, shadow director, promoter, receiver, liquidator, auditor or secretary.

### **Restraining directors and others from removing assets**

- 175.** (1) The High Court may make an order restraining a director or other officer of an ICAV, or an ICAV, from—

- (a) removing his or her or the ICAV's assets from the State, or
  - (b) reducing his or her or the ICAV's assets within or outside the State below an amount specified in the order.
- (2) The High Court may make the order if it is satisfied that—
- (a) the applicant has a qualifying claim, and
  - (b) there are grounds for believing that the director or officer, or the ICAV, may remove or dispose of his or her assets or the assets of the ICAV with a view to evading his or her obligations or those of the ICAV and frustrating an order of the High Court.
- (3) The High Court may make the order only on the application of—
- (a) the ICAV,
  - (b) a director, member, liquidator, receiver or creditor of the ICAV, or
  - (c) the Director of Corporate Enforcement.
- (4) In *subsection (2)(a)* "qualifying claim" means a claim that—
- (a) is a substantive civil cause of action or right to seek a declaration of personal liability or to claim damages against the director, officer or ICAV, and
  - (b) arises—
    - (i) under this Act,
    - (ii) under the instrument of incorporation of the ICAV, or
    - (iii) from the holding of an office of the ICAV.

### Agency with responsibility for enforcement of offences

**176.** (1) The Bank may instigate summary proceedings for offences under *sections 6 (5), 7 (3) and (4), 8 (3), 10 (6), 18 (6), 21 (5), 22 (4), 28 (3), 30 (2), 31 (3) and (5), 33 (3), 36 (2), 39 (4), 42 (3), 43 (4), 46 (4), 49 (4), 50 (5), 55 (7), 66 (4) and (5), 75 (4), 95 (3), 100 (5), 102 (4), 114 (1) and (2), 116 (10), 117 (9), 118 (7), 120 (4), 128 (2), 135 (5), 138 (9), 141 (5), 152 (5) and 165 (5).*

- (2) The Director of Corporate Enforcement may instigate summary proceedings for offences under sections 63 (1), 64 (4), 68 (3), 70 (3), 71 (3), 81 (11) and (12), 82 (3), 83 (10) and (11), 88 (5) and 89 (8).
- (3) Either the Bank or the Director of Corporate Enforcement may instigate summary proceedings for offences under sections 122 (6) and 124 (2).

### **District court district within which summary proceedings may be brought**

**177.** (1) Summary proceedings against an ICAV or an officer of an ICAV acting in his or her capacity as such (or a person purporting to so act) for an offence under this Act may be brought, heard and determined—

- (a) before and by a judge of the District Court as provided for under section 79 or 79A of the Courts of Justice Act 1924, or
- (b) before and by a judge of the District Court for the time being assigned to the district court district in which the registered office of the ICAV is situated immediately prior to the commencement of the proceedings.

- (2) In this section “officer of an ICAV” includes a director, shadow director, promoter, auditor, receiver, liquidator or secretary of an ICAV.
- (3) For the purposes of this section, the place for the time being recorded by the Bank as the situation of the registered office of the ICAV shall be deemed to be the registered office of the ICAV notwithstanding that the situation of its registered office may have changed.

### **Application of other provisions relating to offences**

- 178.** (1) Sections 867 and 870 of the Companies Act 2014 shall apply in relation to offences under this Act as in relation to offences under that Act.
- (2) Section 868 of that Act shall apply in relation to an ICAV as in relation to a company.
- (3) Section 872 of that Act shall apply as if references to that Act included this Act.
- (4) Section 873 of that Act shall apply as if the reference to a category 3 or 4 offence within the meaning of that Act included a category 3 offence under this Act.

### **Special provisions applying where default in delivery of documents to Bank**

**179.** (1) The Bank may deliver a notice that complies with *subsection (2)* to a person if the Bank has reasonable grounds for believing that the person is in default in the production or delivery to, or filing with, the Bank of a document required under this Act (being a default that constitutes a category 3 offence).

(2) The notice referred to in *subsection (1)* is a notice that—

(a) is in the form specified by the Bank,

(b) states that the person has failed to produce or deliver to, or file with, the Bank a document required under a specified provision of this Act,

(c) states that the person to whom the notice is delivered may during a period of 21 days beginning after the date of the notice, or such greater period as may be specified in the notice

—

(i) remedy the default, and

(ii) pay to the Bank an amount specified by the Bank which shall be accompanied by the notice,

and

(d) states that a prosecution of the person to whom the notice is delivered—

(i) will not be instituted during the period referred to in *paragraph (c)*, and

(ii) will not be instituted in any event if, within the period referred to in *paragraph (c)*, the default is remedied and payment is made in accordance with the notice.

(3) Where a notice is delivered under *subsection (1)*—

(a) a person to whom it is delivered may, during the period specified in the notice, make to the Bank payment of the amount specified in the notice, accompanied by the notice,

(b) the Bank may receive the payment and issue a receipt for it and no payment so received shall in any circumstances be recoverable by the person who made it, and

- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and if the default is remedied to the satisfaction of the Bank and payment of the amount specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted in any event.
- (4) In a prosecution for an offence to which this section applies, the defendant shall bear the onus of showing that a payment pursuant to a notice under this section has been made.
- (5) All payments made to the Bank in pursuance of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.
- (6) If the person mentioned in *subsection (1)* is an ICAV, then that subsection authorises the delivery of the notice mentioned in it to an officer of the ICAV but, where the notice is delivered to that officer, the second reference in that subsection to person, and each reference in *subsections (2)* and *(3)* to the person to whom the notice is delivered or otherwise to person, is to be read as a reference to the ICAV.

## General Offences

- 180.** (1) Section 876 (1) and (3), 877 and 878 of the Companies Act 2014, and other provisions of that Act relating to those provisions, have effect as if—
- (a) the references to a company included an ICAV, and
  - (b) the references to that Act included this Act.
- (2) In its application in relation to the provisions mentioned in *subsection (1)* as they have effect in accordance with that subsection, section 865 of the Companies Act 2014 has effect as if the reference to the Director of Corporate Enforcement included the Bank.

## Evidential matters

- 181.** (1) Sections 879 to 886 of the Companies Act 2014 have effect as if references to that Act (or Parts 1 to 15 of that Act) included this Act.
- (2) In the application of section 886(6) in relation to a declaration that purports to be made in pursuance of or for the purposes of—
- (a) this Act, or

(b) a provision of that Act in its application by virtue of this Act,  
the references to the Registrar are to the Bank.

## PART 13

### Miscellaneous

#### Registration and inspection of documents

**182.** (1) Every document relating to an ICAV that is required to be deposited with, or sent or furnished or otherwise provided to, the Bank under this Act or the Companies Act 2014 as it applies in relation to the ICAV—

(a) shall be recorded on a register relating to the ICAV maintained by the Bank, and

(b) shall be open to inspection free of charge on a web-site maintained or used by the Bank.

(2) The register maintained in compliance with *subsection (1)* is in addition to the registers maintained under section 14 or 98 or by virtue of section 86 or 87.

(3) Documents provided—

(a) under *Chapter 2 of Part 2* (or pursuant to a condition imposed under section 27),

(b) under section 147 (2)(d),

(c) by virtue of section 173 (2)(d),

(d) by virtue of section 183, or

(e) by virtue of section 189,

shall not be recorded on the register maintained in compliance with *subsection (1)* or be open to inspection under that subsection.

#### Mergers involving ICAV

**183.** (1) An ICAV authorised under the UCITS Regulations may, in accordance with the provisions of the UCITS Regulations, merge with any other UCITS.

- (2) An ICAV authorised under UCITS Regulations which is the merging UCITS in relation to a merger for the purposes of the UCITS Regulations which involves the transfer of all its assets and liabilities to another UCITS (or a sub-fund of another UCITS) in the course of the merger shall, in accordance with the provisions of the UCITS Regulations, be dissolved without winding up on the coming into effect of the merger.
- (3) An ICAV authorised under *section 19* may merge with any other form of collective investment vehicle in accordance with any conditions imposed by the Bank.
- (4) An ICAV authorised under *section 19* which transfers all of its assets and liabilities to another collective investment vehicle (or a sub-fund of another collective investment vehicle) in accordance with conditions imposed by the Bank shall be dissolved without winding up on the coming into effect of the merger.

## Taxation

**184.** Section 739B of the Taxes Consolidation Act 1997 is amended in subsection (1), in the definition of “investment undertaking”—

(a) by deleting “and” after paragraph (b), and

(b) by inserting the following after paragraph (c):

“and

(ca) an authorised ICAV (within the meaning of the *Irish Collective Asset-management Vehicles Act 2015*);”.

## Fees

**185.** Fees shall be payable in accordance with section 32E of the Central Bank Act 1942 in respect of the performance by the Bank of its functions under this Act.

## Categories of offences

**186.** (1) A person guilty of an offence under this Act that is stated to be a category 1 offence is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years, or to both.

(2) A person guilty of an offence under this Act that is stated to be a category 2 offence is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or to both.

(3) A person guilty of an offence under this Act that is stated to be a category 3 offence is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or to both.

### Amendments of UCITS Regulations

**187.** The UCITS Regulations are amended—

(a) in Regulation 3(1) —

(i) by inserting the following definitions:

“‘Act of 2015’ means the *Irish Collective Asset-management Vehicles Act 2015*,” and

“‘ICAV’ means an ICAV within the meaning of the Act of 2015;”

(ii) in the definition of “articles”, by inserting “and, in relation to an ICAV, means its instrument of incorporation within the meaning of the Act of 2015” at the end,

(iii) in the definition of “directors”, by inserting “and includes directors and shadow directors of an ICAV” at the end, and

(iv) by substituting for the definition of “investment company” the following:

“‘investment company’ means—

(a) an investment company with fixed capital,

(b) an investment company with variable capital, or

(c) except in Regulations 45, 89(4)(a) and 107, an ICAV;”,

and

(b) in Regulation 4(6) by—

(i) deleting “or” after subparagraph (c), and

(ii) substituting the following for subparagraph (d):

“(d) common contractual funds, or

(e) Irish collective asset-management vehicles.”.

### **Adaptation of certain provisions of UCITS Regulations**

**188.** (1) Regulations 17(11), 42(4) (d), 104(2), 125 to 127, 131, 134(1) to (9) and 135(1) and (2) of the UCITS Regulations apply to an ICAV authorised under section 19 as they apply to the bodies to which those Regulations relate but subject to the modifications in subsection (2).

(2) The modifications are that—

(a) references to repurchase are to purchase,

(b) references to the UCITS Regulations are to this Act,

(c) references to an UCITS are to an ICAV,

(d) references to a unit are to a share,

(e) references to a unit-holder are to a shareholder, and

(f) references to the Companies Acts include this Act.

(3) References to cognate terms or expressions in those Regulations shall be read accordingly.

### **Amendments of Central Bank Act 1942**

**189.** The Central Bank Act 1942 is amended—

(a) in section 33AK(3) by inserting the following after paragraph (a)(vi)(II):

“or

(III) the Irish Collective Asset-management Vehicles Act 2015,”

and

(b) in Part 1 of Schedule 2 by inserting the following:

“

43	No._of 2015	<i>Irish Collective Asset- management Vehicles Act 2015</i>	The whole Act, apart from Parts 5, 10 and 12
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”.

### Exemption from liability void

- 190.** (1) Subject as follows, any provision whether contained in the instrument of incorporation of an ICAV or in any contract with an ICAV or otherwise for exempting any officer of the ICAV or any person employed by the ICAV as auditor from, or indemnifying him or her against, any liability which by virtue of any rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the ICAV is void.
- (2) An ICAV may, in pursuance of any provision referred to in *subsection (1)*, indemnify any such officer or auditor against any liability incurred in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted.
- (3) An ICAV may purchase and maintain for any of its officers or auditors insurance in respect of any liability referred to in *subsection (1)*.

- (4) Despite any provision contained in an enactment, the instrument of incorporation of an ICAV or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit.
- (5) In this section a reference to an officer or auditor includes any former or current officer or auditor of the ICAV.

### **Notice, etc.**

**191.** Where a notice, direction or other document is authorised or required by or under this Act to be served on a person, it may, unless otherwise specified in this Act, and in addition to the methods specified in section 61G(1) of the Central Bank Act 1942, be served to or on a natural person, body corporate or partnership, electronically, that is to say by electronic mail to an email address, or to a facsimile number, furnished by the person for that purpose to the Bank.

### **Director of Corporate Enforcement**

**192.** (1) Sections 953, 956 and 957 of the Companies Act 2014 have effect as if references to that Act included this Act.

(2) Without prejudice to the generality of *subsection (1)*, and in addition to the functions under section 949 of the Companies Act 2014, the Director of Corporate Enforcement may perform the functions conferred on the Director of Corporate Enforcement by this Act and do such acts or things as are necessary or expedient in the performance of those functions.

## **SCHEDULE**

### Accounts

#### Section 116



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Statement of Operations	2	<p><b>Statement of Operations</b></p> <table> <tbody> <tr> <td colspan="3"><i>Investment Income</i></td> </tr> <tr> <td>Dividends (net of foreign withholding taxes)</td> <td>X</td> <td></td> </tr> <tr> <td>Interest</td> <td>X</td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>X</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="3"><i>Expenses</i></td> </tr> <tr> <td>Investment management fees</td> <td>X</td> <td></td> </tr> <tr> <td>Performance fees</td> <td>X</td> <td></td> </tr> <tr> <td>Professional fees</td> <td>X</td> <td></td> </tr> <tr> <td>Custodian and transfer agent fees</td> <td>X</td> <td></td> </tr> <tr> <td>Directors fees</td> <td>X</td> <td></td> </tr> <tr> <td>Audit fees</td> <td>X</td> <td></td> </tr> <tr> <td>Other</td> <td>X</td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td>Less: fees waived</td> <td></td> <td>X</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td>Net expenses</td> <td></td> <td>X</td> </tr> </tbody> </table>	<i>Investment Income</i>			Dividends (net of foreign withholding taxes)	X		Interest	X							X				<i>Expenses</i>			Investment management fees	X		Performance fees	X		Professional fees	X		Custodian and transfer agent fees	X		Directors fees	X		Audit fees	X		Other	X					Less: fees waived		X				Net expenses		X			
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<sup>1</sup>OJ No. L 174, 01.07.2011, p. 1

<sup>1</sup>OJ No. L 243, 11.09.2002, p.1

