



The Consultative Committee of Accountancy Bodies-Ireland

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INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS PROVISIONS ACT 2006

This Memorandum has been prepared by the Consultative Committee of Accountancy Bodies – Ireland (“CCAB-I”) to highlight for the members of its constituent bodies those provisions of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 (“the 2006 Act”) which substantially change detailed provisions of previous companies legislation or which introduce significant new statutory requirements for companies.

This Memorandum, which summarises significant provisions of the Act, does not deal in detail with individual Sections and cannot be regarded as a comprehensive guide to the Act’s detailed requirements. It should be read in conjunction with, and not as a substitute for, the Act.

Many provisions of this Act, which was passed by the Oireachtas in December 2006, have already been brought into force. . The relevant details are set out in the Appendix.

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INTRODUCTION

1. The Explanatory Memorandum, issued with the initial draft of this legislation by the Department of Enterprise, Trade and Employment in July 2000, highlights that the Act's main provisions include:
 - Increasing the audit exemption thresholds for turnover and balance sheet totals up to the maximum levels permitted by the EU
 - Facilitating smooth and effective implementation in the Republic of Ireland of the "Transparency Directive" (2004/109)
 - Empowering the Irish Takeover Panel to make rules to give effect to provisions of relevant EU law
 - Align the General Principles in the Schedule to the Takeover Panel Act 1997 with those in "the Takeover Bids Directive" (2004/25).
2. Significant changes made by the Oireachtas to the Bill as initiated include
 - Maximum number of members in private limited companies increased from 50 to 99
 - Revised framework for statutory declarations made overseas
3. Parts 2 and 3 of this Act are to be construed as one with the existing Companies Acts. The Acts are now cited as the Companies Acts, 1963 to 2006.

AMENDMENTS OF COMPANIES ACTS (*Part 2*)

4. A statutory declaration for the purposes of the Companies Acts, when made in a place outside the Republic of Ireland, is valid if made before:
 - (a) A person entitled to practice as a solicitor in the Republic of Ireland; or
 - (b) A person authorised under the law of that place to administer oaths (*Section 6*).
5. A statutory declaration made on this basis and delivered to the Registrar of Companies prior to 24th December 2006 shall be, and deemed always to have been, valid.
6. The permitted number of members in a private company is increased from 50 to 99 (*Section 7*).
7. Section 7 specifies the types of offers of debenture, or offers of shares, which can be made by a private limited company, as a consequence of the Prospectus Directive (2003/71/EC) Regulations 2005 – S.I. 324 of 2005, without breaching the general prohibition of offers to the public by a private limited company of its shares or debentures.
8. The turnover and balance sheet thresholds applicable to companies which wish to avail of audit exemption are increased to €7,300,000 and €3,650,000 respectively (*Section 9*). The other qualifying criteria for audit exemption listed in Section 32(3) Companies (Amendment) (No. 2) Act, 1999, have not changed

9. However, Section 33 of that Act, which permits members holding at least 10% of the total voting rights in the company to formally notify the company that they require an audit, is amended to allow the specified notice to be given to the company at any time during the prior financial year, or no later than 1 month before the end of the financial year to which the notice relates.
10. The revised balance sheet and turnover thresholds apply for accounting periods commencing on or after 24th December 2006. The revised criteria also apply to financial years which commenced prior to 24th December 2006 and end on or after 24th February 2007.
11. Section 150, Companies Act, 1990, empowers the Court to order that the director/s against whom a restriction order has been made “shall bear the costs of the application and any costs incurred by the applicant in investigating the matter.”. Section 150 (4B) is amended to specify the costs of the application includes “...so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection” (*Section 11*).
12. Section 239, Companies Act, 1990, is extended to empower the Minister for Enterprise, Trade and Employment to make Regulations requiring securities of companies listed on a regulated market be held in electronic form (*Section 12*).
13. Where a prospectus is issued solely regarding non-equity securities, the liability of the guarantor for the contents of the prospectus is restricted to statements/omissions relating to the guarantor or the guarantee given by the guarantor (*Section 13*).
14. Section 45, Investment Funds, Companies and Miscellaneous Provisions Act 2005, is revised to provide that the obligation on the company to specify written consent from the expert has been obtained (and not withdrawn) to the inclusion of the expert’s statement in the prospectus only applies if so required by EU prospected law (*Section 14*).
15. The functions of the Irish Auditing and Accounting Supervisory Authority are extended to include those conferred on it by regulated market law (*Section 16*).

TRANSPARENCY REQUIREMENTS REGARDING ISSUES OF SECURITIES ADMITTED TO TRADING ON CERTAIN MARKETS (*Part 3*)

16. This Part contains enabling provisions to facilitate implementation in the Republic of Ireland of the EU Directive on Transparency Requirements in relation to Information about Issuers whose Securities are Admitted to Trading on a Regulated Market (2004/109) (“the Transparency Directive”).
17. These provisions, together with further related measures, are defined as “transparency (regulated markets) law”.
18. A person convicted on indictment of an offence under transparency (regulated markets) law can be liable to a fine of up to €1,000,000 and/or imprisonment for up to 5 years (*Section 21*).

19. Supplemental rules “...as the competent authority considers necessary or expedient”, but which must be consistent with the transparency (regulated markets) law, can be made by the Financial Regulator (*Section 22*).

MISCELLANEOUS (*Part 4*)

20. This Part includes amendments to the Takeover Panel Act 1997 (“the 1997 Act”) to address issues which have arisen in practice following implementation in the Republic of Ireland of the Directive on Takeover Bids (2004/25).
21. The definition in the 1997 Act of “persons acting in concert” is revised (*Section 25*) to specify the agreement can be “...either express or tacit, either oral or written...”. The scope of the definition is extended to include an agreement for the purposes of acquiring control of the company concerned, or to frustrate a takeover bid by another party.
22. Sections 2 and 2A of the 1997 Act, amended most recently by the Investment Funds, Companies and Miscellaneous Provisions Act 2005, are revised to exclude from the remit of the Irish Takeover Panel public limited companies whose only “securities” are debt securities which do not confer voting rights (*Section 26-28*).
23. The rule making powers of the Irish Takeover Panel, which is the competent authority for the purposes of the Directive on Takeover Bids, are extended to give effect to detailed provisions of relevant EU law (*Section 29*). These rules may “...contain such supplementary, incidental or consequential provisions as appear to the Panel to be necessary or desirable...”.
24. The General Principles in the Schedule to the 1997 Act are revised to be wholly consistent with the General Principles of the Directive on Takeover Bids (*Section 30*).
25. The revision to Section 1, Netting of Financial Contracts Act, 1995, provides that:
 - (a) Partnerships, whether constituted as an ordinary partnership or a limited liability partnership;
 - (b) Undertakings for collective investment in transferable securities – UCITS; and
 - (c) Common contractual funds (“CCF”) that are not UCITScome within the definition of “party” and, therefore, fall within the scope of that 1995 Act (*Section 35*).

APPENDIX

| Provision | Commencement Order | Effective Date |
|--|--|---|
| PART 1 Sections 1 to 5 | N/A | 24 th December 2006 |
| PART 2 Section 6 Sections 7 and 8 Sections 9 and 10 Sections 11 and 12 Sections 13 to 15 Section 16 to 18 | N/A N/A N/A S.I. 23 of 2007 N/A S.I. 23 of 2007 | 24 th December 2006 1 st July 2005 24 th December 2006 29 th January 2007 24 th December 2006 29 th January 2007 |
| PART 3 Section 19 to 22 Section 23 Section 24 | S.I. 23 of 2007 S.I. S.I. 23 of 2007 | 29 th January 2007 29 th January 2007 |
| PART 4 Section 25 to 34 Section 35 | S.I. 23 of 2007 N/A | 29 th January 2007 24 th December 2006 |