

Companies Report 2009

Presented to the Oireachtas in accordance with
the provisions of the Companies Acts 1963 to 2009



An Roinn Fiontar, Trádála agus Nuálaíochta
Department of Enterprise, Trade and Innovation

FOREWORD

I am pleased to present the Annual Companies Report for 2009. This Report sets out the changes made to the companies legislative framework in what was a busy year, with two Companies Acts being brought into effect as well as eight new Statutory Instruments.

The Companies (Amendment) Act 2009, which was enacted in July, introduced a number of measures to enhance the powers of the Director of Corporate Enforcement in relation to access to information in the possession of companies. In addition it amended the requirements regarding the disclosure of loans made by a company that is a licensed bank to a director or connected person of that company. The Act also modified the evidential requirement on the Director of Corporate Enforcement when pursuing alleged breaches of Company Law in relation to loans to directors.

The Companies (Miscellaneous Provisions) Act 2009 was signed into law on the 23rd of December and as the name suggests made amendments to various unrelated elements of the Companies Acts. These include the provision that for a limited period, a certain specified category of companies can make use of US Generally Accepted Accounting Principles in the preparation of their accounts. The Act also introduces a mechanism whereby collective investment fund entities can migrate their registered offices into and out of Ireland without firstly having to wind up in their current jurisdiction.

Among the Statutory Instruments made in 2009 was the Shareholders' Rights (Directive 2007/36/EC) Regulations (S.I. No. 316 of 2009), which provides that shareholders of publicly listed companies have timely access to relevant information ahead of General Meetings. In November, the EC (Directive 2006/46/EC) Regulations (S.I. No. 450 of 2009) came into effect. These Regulations require disclosure of off balance sheet arrangement, related party transactions and for listed companies, the preparation and publication of a corporate governance statement.

Work is also continuing on the Companies Consolidation and Reform Bill which will consolidate all current companies legislation and certain common law provisions into a single Bill. Given the scale and complexity of the proposed Bill, publication is not expected until late 2011.

Billy Kelleher
Minister for Trade and Commerce

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Chapter 1 Legislative Developments

PRIMARY LEGISLATION

Companies (Amendment) Act 2009 (No. 20 of 2009)

The Companies (Amendment) Act 2009, enacted on 12 July of that year, made changes to three areas of company law.

The Act improves the transparency of loans made by companies that are banks to their directors and to persons connected with them by, *inter alia*, requiring publication of additional information in the annual accounts of such companies.

Secondly it introduced a range of measures to support the Director of Corporate Enforcement in the enforcement of compliance with company law including:

- making it an offence for companies and their directors not to comply with the disclosure provisions in the Companies Acts regarding loans etc. to directors and connected persons and regarding material interests of directors in company contracts;
- clarifying or providing a specific right of access for the Director of Corporate Enforcement to the statutory Register of Directors' Interests in Contracts made by the company;
- modifying the evidential requirement on the Director of Corporate Enforcement when pursuing alleged breaches of Company Law rules in relation to company loans to directors,
- clarifying the right of the Director of Corporate Enforcement to access third party records relating to a company under investigation,
- modifying the provisions of the Companies Act 1990 dealing with the entry and search of premises by the Office of the Director of Corporate Enforcement (ODCE) on foot of a search warrant issued by a judge of the District Court. The amendments provide for situations where an extension of the period of a search warrant can be sought from and granted by the Court. It also makes provision for the removal of paper and electronic information from premises being searched for subsequent examination elsewhere, and
- modifying the provisions of the Companies Act 1990 dealing with professional privilege. The 2009 Act amends existing provisions of the Companies Act 1990 which at present protects a person from having to disclose information which, in the opinion of the court, the person would be entitled to refuse to disclose on grounds of legal professional privilege. The new provisions will permit the seizure of information (whether privileged or

not) on a sealed basis and provide that either the ODCE or any person affected may apply to court for a determination of matters relating to privilege. The amendments also provide for the introduction of a mechanism where the court can be assisted by the appointment of an experienced independent person with suitable legal qualification to examine the information and prepare a report with a view to assisting or facilitating the court in making its determination.

Finally the Act amended sections 43 and 44 of Companies (Amendment) (No.2) Act 1999 in order to meet the concerns of the European Commission that the requirement that at least one director of a company must be resident in the State was not compatible with the EC Treaty. This was amended to residence in a Member State of the EEA. The methods by which a company can prove that it has a link with economic activity in the State were also clarified.

Companies (Miscellaneous Provisions) Act 2009 (No. 45 of 2009)

The purpose of this Act is to amend company law across a range of areas and was signed into law by the President on 23rd December 2009.

The Act provides for the transitional use of US Generally Accepted Accounting Principles (US GAAP) in the preparation of the accounts of a specified category of companies for a limited period to conclude by the end of 2015. It also enables the Minister to prescribe other internationally recognised accounting standards for similar companies for a similar limited period.

Section 3 of the Act introduces a mechanism whereby collective investment fund entities can migrate their registered offices into and out of Ireland without firstly having to wind up in their current jurisdiction. The Act also applies the new funds migrating mechanism for companies to collective investment funds under the UCITS regulations.

Other miscellaneous provisions of the Act include:

- provision for the recognition, by order of the Minister, of Stock Exchanges outside the State on which a market purchase of own shares can be made;
- a limit on the potential costs to the Exchequer of investigations into the affairs of a company;
- provision for continuity of membership by directors of committees of enquiry established by the Irish Auditing and Accounting Supervisory Authority.

SECONDARY LEGISLATION

Companies (Auditing and Accounting Act) 2003 (Commencement) Order S.I. No. 13 of 2009

This Order fixes 27 January 2009 as the date on which section 36 of the Act comes into operation providing for statutory backing for the disciplinary procedures of prescribed accountancy bodies.

European Communities (Transitional Period Measures in Respect of Third Country Auditors) Regulations 2009 (S.I. No. 229 of 2009)

These Regulations give effect to Commission Decision 2008/627/EC of 29 July 2008 and provide for a transitional period in respect of the registration requirements set out at Article 45 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 in respect of auditors and audit entities from the third countries listed at the Annex to the Commission Decision.

The third country auditors and audit entities in question are those non-EU auditors and audit entities who audit companies incorporated outside of the European Community which have transferable securities listed to trading on a market regulated within the Community. The stipulated information for registration is provided to the competent authorities in Member States who are required to record this and ensure that the public is informed about certain of its specific aspects. The arrangements provided for in the Regulations apply for financial years starting on 29 June 2008 and ending on 1 July 2010. The Regulations were implemented with effect from 26 June 2009.

Companies Act 1963 (Alteration of Eighth Schedule) Order 2009 (S.I. No. 302 of 2009)

This Order alters the Eighth Schedule to the Companies Act 1963 by substituting Part 1 of the Schedule and revokes the Companies (Fees) (No 4) Order 2005 (S.I. No. 737 of 2005) and the Companies (Fees) Order 2006 (S.I. No. 502 of 2006).

Investment Funds Companies and Miscellaneous Provisions Act 2005 (Commencement) Order 2009 (S.I. No. 303 of 2009)

This Order fixes 1 September 2009 as the date on which sections 59 and 60 of the Act comes into operation. These provisions allow for the reservation of a company name for a specified period of time prior to incorporation.

Companies (Fees) Order 2009 (S.I. No. 304 of 2009)

The Order provides for filing fees where certain documents are filed electronically or in paper form with the Registrar of Companies.

Shareholders' Rights (Directive 2007/36/EC) Regulations 2009 (S.I. No. 316 of 2009)

These Regulations introduce minimum standards to ensure that shareholders of companies whose shares are traded on a regulated market have timely access to the relevant information ahead of the General Meeting and simple means to vote at a distance.

Investment Funds, Companies and Miscellaneous Provisions Act 2005 (Commencement) Order 2009 (S.I. No. 335 of 2009)

This Order fixes the 23rd day of August 2009 as the day on which section 69 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 comes into operation.

Section 69 designates the Irish Auditing and Accounting Supervisory Authority as a competent authority under section 21(3) of the Companies Act 1990, which deals with the security of information obtained during statutory investigations undertaken by the Office of the Director of Corporate Enforcement. As a competent authority, IAASA will be able to receive confidential information arising from the exercise by the ODCE of its statutory investigative powers.

European Communities (Directive 2006/46/EC) Regulations 2009 (S.I. No 450 of 2009)

These Regulations give effect to Directive 2006/46/EC of the European Parliament and of the Council, of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings. The principal requirements of the Directive are obligations to disclose off balance sheet arrangements, related party transactions and (for companies with securities admitted to trading on a regulated EEA market i.e. listed companies) the preparation and publication of a corporate governance statement including a description of the internal control and risk management system. These Regulations were implemented with effect from 18 November 2009.

DIRECTIVES BEING IMPLEMENTED AT YEAR-END

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Eighth Company Law Directive)

The Directive provides for the reinforcement and harmonisation of the statutory audit function throughout the EU and sets out principles for public supervision in all Member States along with a requirement for external quality assurance and clarifies the duties of statutory auditors. It also sets out principles of independence applicable to all statutory auditors. It also requires listed companies to set up an audit committee with clear functions to perform.

Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EC and 83/349/EC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts. (Fourth and Seventh Company Law Directives)

This Directive provides, in the case of the Fourth Directive, for simplified financial reporting by small and medium-sized companies (SMEs) which will lead to a reduced administrative burden for SMEs without loss of transparency to users of accounts. It also provides, in the case of the Seventh Directive, for clarification of the interaction between consolidation rules in this Directive and in the International Financial Reporting Standards and the avoidance of duplication of work on these accounts.

Directive 2009/109/EC of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.

The Directive provides for the reduction in the reporting requirements of companies in the case of mergers and divisions, avoidance of double reporting and the introduction of the possibility for companies to use the Internet and electronic mail in order to publish the draft terms of a merger or division.

FUTURE PROPOSALS

Statute for a European Private Company (Societas Privata Europaea – SPE)

The proposed Statute for a European Private Company (Societas Privata Europaea – SPE) forms part of the Small Business Act for Europe. It takes the form of a Regulation and contains a set of uniform company law rules that would apply to any SPE set up across the Member States. Essentially, it gives entrepreneurs the option of forming an SPE instead of a private limited company under national law. The objective of the SPE is to make it easier for European SME's to conduct cross-border

business by providing them with a European legal form that is uniform in each Member State.

Negotiations, which commenced in July 2008, are currently stalled following the failure of a compromise proposal by the Swedish Presidency to secure the necessary unanimity at the Council of Ministers in December 2009.

Review of the Prospectus Directive (Directive 2003/71/EC)

In line with the "Better Regulation" principles, the European Commission published a proposal for amending the Prospectus Directive (Directive 2003/71/EC) in late September 2009. The proposal is part of simplification exercise within the Action Programme of the European Commission for the Reduction of Administrative Burdens in the European Union. The proposal increases legal clarity and efficiency in the prospectus regime and reduces administrative burdens for issuers and intermediaries. It also bears in mind the importance of enhancing the level of investor protection and ensuring that the information provided is sufficient and adequate to cover the needs of retail investors. It reflects consultation with all major stakeholders.

The Council reached a “general approach “ agreement on the proposal in December 2009. Negotiations are continuing between the Presidency, Council and European Parliament with a view to reaching agreement on a text for formal adoption.

Review of the Market Abuse Directive (Directive 2003/6/EC)

The EU Commission are currently carrying out a review of the Market Abuse Directive in line with a provision in the Directive that such a review be carried out 5 years after adoption. The Commission are currently assessing submissions/comments from a public consultation and are expected to bring forward proposals for amending the Directive in 2010.

The Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) which came into operation on 6 July 2005, and Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 transposed the Market Abuse Directive into Irish law.

Copies of legislation may be purchased direct from the Government Publications Sales Office, Government Publications Warehouse, Mount Shannon Road, Rialto, Dublin 8 or by post from Government Publications, Postal Trade Section, 4/5 Harcourt Road, Dublin 2. Phone: (01) 6733515 ext. 4040/4045; Fax: (01) 6476843.

The text of Acts, Statutory Instruments and Regulations relevant to companies is available on the Department's website www.entemp.ie or

*may be obtained on the Houses of the Oireachtas' website
www.oireachtas.ie or the Office of the Attorney General's website
www.attorneygeneral.ie.*

Chapter 2 Company Law Reform

Company Law Review Group

The Plenary Committee of the Company Law Review Group (CLRG) comprises 26 members, consisting of company law practitioners, regulators and representative bodies and is chaired by Dr. Thomas B. Courtney, Partner, Arthur Cox Solicitors. The CLRG's main activities in 2009 were the publication of its Annual Report for 2008 and the continuation of its work-programme for the period 2008/2009, as set out by the Minister for Trade and Commerce in August 2008.

Work Programme 2008/2009

The Work Programmes of the CLRG have a two-year cycle. The 2008-2009 Work Programme was a mix of new issues and work outstanding from the 2007 programme, following completion of the General Scheme of the Companies Consolidation and Reform Bill. The 2008-2009 CLRG's Work Programme comprises 15 items and a report was submitted to the Minister on its conclusions in March 2010.

Companies Consolidation And Reform Bill

The CLRG published its General Scheme of the Companies Consolidation and Reform Bill in July 2007. The Government subsequently approved the drafting of a Bill along the lines of the General Scheme. The proposed Bill will consolidate the existing Irish Companies Acts, dating from 1963 to 2009, as well as other regulations and common law provisions relating to the incorporation and operation of companies, into a single Act comprising more than 1,300 sections. Given its size and complexity it is envisaged that the Bill will not be published until Autumn 2011.

Chapter 3 Statutory Functions of the Minister for Enterprise, Trade and Innovation

The Minister for Enterprise, Trade and Innovation has a number of statutory functions under the Companies Acts. This Chapter reports on the discharge of these functions in 2009.

Companies exempted from showing particulars of directors on headed paper

Section 196 of the 1963 Companies Act states that particulars relating to directors are to be shown on all business letters of a company. In certain circumstances, an exemption from this requirement may be granted by the Minister.

The table below shows the numbers exempted from showing particulars over the past five years:

	2005	2006	2007	2008	2009
Companies Exempted	3	2	5	3	4
Applications rejected	4	9	4	8	2

Approval of Prospectus for Business Expansion Schemes (BES)

The function of the Minister for Enterprise, Trade and Innovation in relation to BES funds is to ensure that the prospectus and publicity material for a fund give prospective investors the information required to make an objective decision when deciding to invest in a particular fund.

Under section 5 of the Designated Investment Funds Act 1985, the Minister for Enterprise, Trade and Innovation has to approve the terms of the prospectus and other publicity material for each fund while the Revenue Commissioners look after the tax elements. The 1985 Act requires that each prospectus must clearly include statements:

- (i) regarding the risks involved
- (ii) that no liability shall attach to the Minister
- (iii) that no right to relief shall arise by reason only of the Minister's approval that before subscribing to a fund a prospective investor should seek professional advice.

Ultimately the responsibility for assessing the bona fides of a particular fund rests with the investor.

Six applications were approved in 2009 as follows:

Name	Size of Fund	Trustees	Manager	Managers Fee
The 2009 Simple.ie Green BES Fund	€500,000 (min) €10m (max)	IFG Trust Company Limited	BVP Investments Limited	4% payable by participants on the amount of investment
The 2009 Pinnacle BES Fund	€2m (min) €10m (max)	IFG Trust Company Limited	Pinnacle Capital Partners Limited	3.5% payable by participants on the amount of investment
The 2009 Quintas Wealth Management BES Fund	€2m (min) €10m (max)	IFG Trust Company Limited	Quintas Wealth Management Limited	3.5% payable by participants on the amount of investment
The 2009 ITC Powerscourt Dynamic Portfolio Prospectus	€2m (min) €10m (max)	IFG Trust Company Limited	Independent Trustee Company Limited	4% payable by participants on the amount of investment
The 2009 Davy BES Fund	€2m (min) €10m (max)	Capita Corporate Trustees Limited.	BES Management Limited	3.5% payable by participants on the amount of investment
The 2009 Kernel Life Science BES Fund	€1.5m (min) €10m (max)	IFG Trust Company Limited	Pinnacle Capital Partners Limited	3.5% payable by participants on the amount of investment

Investment Limited Partnerships

The Investment Limited Partnerships Act 1994 provides for the establishment, authorisation and regulation of a form of collective investment scheme known as an investment limited partnership. It also provides that the Financial Regulator shall submit an annual report to the Minister for Enterprise, Trade and Innovation on the exercise of its functions under the Act.

Since the introduction of the Act, dynamic changes in the marketplace for investment funds has resulted in promoters and investors utilising other types of investment vehicle that are available in preference to establishing investment limited partnerships. The Financial Regulator has reported that he did not authorise any new investment limited partnerships during 2009.

Secretaries of Public Limited Companies

Section 236 of the Companies Act 1990 places a duty on directors of a PLC to take all reasonable steps to ensure that the secretary of the company has adequate knowledge and experience to discharge the functions of a secretary as laid down by the Act. The section provides that the Minister may recognise relevant bodies for the purpose of the section. The Institute of Chartered Secretaries and Administrators (ICSA) has been so recognised by the Minister. It is not obligatory for a secretary of a plc to be a member of a recognised body.

The total membership of the Institute worldwide as of 31 July 2009 was 39,212.

	Worldwide	Ireland
Associates and Fellows	35,340	544
Graduates	3872	72

Note: The Institute can no longer differentiate between Associates and Fellows worldwide due to changes in the way it gathers this data. Graduate denotes a candidate for the Profession who has completed the education requirements but has not yet met the other criteria to be considered for membership.

The Institute has reported that no complaints were received concerning any member in the Irish Region in 2009.

Chapter 4 Agencies/Offices operating in Company Law Area

This Chapter provides direct web links to the Annual Reports of the Companies Registration Office, the Office of the Director of Corporate Enforcement, the Irish Auditing and Accounting Supervisory Authority) and the Irish Takeover Panel.

The Reports of the Irish Stock Exchange and Euroclear UK & Ireland are attached at Appendix 1 and 2 respectively.

1. Companies Registration Office (CRO)

The Annual Report of the CRO will be available on the Office's website following publication and can be accessed at - [cro corporate publications](#)

2. Office Of The Director Of Corporate Enforcement (ODCE)

The Director of Corporate Enforcement published his ninth Annual Report for the year 2009 pursuant to section 16(1) of the Company Law Enforcement Act 2001. The Report is available for download on the ODCE website and can be accessed at - [odce general publications](#)

3. Irish Auditing and Accounting Supervisory Authority (IAASA)

IAASA is required under Section 22 of the Companies (Auditing and Accounting) Act 2003 to submit an Annual Report to the Minister. The Report will be available on IAASA's website which can be accessed at - [iaasa publications](#)

4. Irish Takeover Panel

The Irish Takeover Panel published its eleventh Annual Report pursuant to Section 19 of the Irish Takeover Panel Act 1997. The Report, which covers the period from 1 July 2007 to 30 June 2008, is available for download from the Panel's website at - [irish takeover panel annual report 2009](#)

Appendix 1 The Irish Stock Exchange

ANNUAL REPORT TO THE MINISTER FOR ENTERPRISE, TRADE AND INNOVATION PRUSUANT TO PART V OF THE COMPANIES ACT 1990 FOR THE YEAR ENDED 31st DECEMBER 2009

PART V, COMPANIES ACT, 1990

1. Background

- 1.1 Part V of the Companies Act, 1990 (the Act) creates an offence of Insider Dealing, and provides for criminal and civil sanctions in relation to contraventions of Part V.
- 1.2 Section 115(1) of the Act, as amended by the Company Law Enforcement Act, 2002, places a statutory duty on the relevant authority of a recognised stock exchange to furnish the Director of Corporate Enforcement with a report where it appears to it that an offence has been committed under the legislation.
- 1.3 For the purposes of Part V of the Act, the Irish Stock Exchange is a recognised stock exchange. Under Section 107 of the Act a relevant authority is defined as being:-
 - (a) its board of directors, committee of management or other management body, or
 - (b) its manager however described.
- 1.4 Section 120 of the Act requires the Irish Stock Exchange, as a recognised stock exchange, to make an annual report to the Minister for Enterprise, Trade and Innovation. This report must include:
 - (a) the number of written complaints received concerning possible contraventions of Part V,
 - (b) the number of reports made to the Director of Corporate Enforcement under Part V,
 - (c) the number of instances in which, following the exercise of powers by authorised persons under Part V, reports were not made to the Director of Corporate Enforcement, and
 - (d) such other information as may be prescribed.

1.5 On 6th July 2005 the Market Abuse (Directive 2003/6/EC) Regulations, 2005 (Market Abuse Regulations) were enacted. As a result, securities traded on the Main Market of the Exchange are now within the scope of the Market Abuse Regulations and Part V applies to trades in Irish securities which took place prior to the 6th July 2005 and trading post this date in Irish securities traded on the Exchange's Irish Enterprise Exchange (IEX) market only. Since the introduction of the European Communities (Markets in Financial Instruments) Regulations 2007 on 1st November 2007, the Exchange is also obliged under Section 67 (2) of those Regulations to report to the Financial Regulator conduct that may involve market abuse in relation to IEX securities.

2. Nature of Investigation Process

Until 6th July 2005 the investigation of possible contraventions of Part V was undertaken by persons authorised under Section 117 of the Act, this remains the case for IEX securities. Under the Market Abuse Regulations the Financial Regulator (FR) has delegated certain powers to the Exchange for the investigation of suspected cases of market abuse (including insider dealing). The decision making authority in relation to market abuse issues and the reporting obligations in relation to activity undertaken under the Market Abuse Regulations are now a matter for the FR.

In the context of Part V, authorised persons plan, perform and report on the results of their investigations in association with a relevant authority of the Stock Exchange, typically the Chief Executive. All cases that give rise to a reporting obligation under Section 115 of the Act are reported to the Director of Corporate Enforcement as soon as practicable after the investigation has been concluded.

The exact nature of the investigation process may vary depending on the particular details of each case. However the investigation process is structured so as to ensure:

- a complete review of all facts relevant to the investigation,
- due attention is paid to the right of any suspect(s) to fair procedures,
- the production of a complete chain of evidence to ensure comprehensive reporting to the Director of Corporate Enforcement, if required.

In addition independent expert opinion from industry specialists and/or legal advisors is sought if the circumstances of a particular case demand it.

3. Report for the year ended 31st December 2009

3.1 In accordance with its obligations under Section 120 of the Act, the Irish Stock Exchange reports to the Minister in relation to its activities during 2009, as follows:

- (a) No written complaints were received in relation to alleged breaches of Part V of the Act.
- (b) One report was made by the Chief Executive in her capacity as Relevant Authority under Part V of the Act, to the Director of Corporate Enforcement in respect of a suspected offence.
- (c) Authorised persons exercised statutory powers in relation to two investigations into suspected breaches of Part V. One of these investigations was ongoing at the end of 2009.
- (d) No other information has been prescribed by the Minister under Section 120(1)(d).

ANNUAL REPORT TO THE MINISTER FOR ENTERPRISE, TRADE AND INNOVATION PURSUANT TO REGULATION 10 OF THE EUROPEAN COMMUNITIES (ADMISSIONS TO LISTING AND MISCELLANEOUS PROVISIONS) REGULATIONS 2007

EUROPEAN COMMUNITIES (ADMISSIONS TO LISTING AND MISCELLANEOUS PROVISIONS) REGULATIONS 2007

1. Introduction

The European Communities (Stock Exchange) Regulations 1984 (S.I. No. 282 of 1984) were repealed during 2007 and replaced by the European Communities (Admissions to Listing and Miscellaneous Provisions) Regulations 2007 (S.I. No. 286 of 2007) (“the Regulations”). The Regulations implement the Consolidated Admissions and Reporting Directive (2001/34/EC) (“the Directive”) into Irish law. The Regulations appoint the Irish Stock Exchange as Competent Authority for the purposes of the Directive and require that it furnish an annual report to the Minister for Enterprise, Trade and Innovation on the exercise of its functions as Competent Authority.

The Board of The Irish Stock Exchange Limited (the “Board”) now presents the twenty-fifth annual report on the exercise of its functions as Competent Authority in the State during 2009 in accordance with Regulation 10, Paragraphs (a) to (e) of the Regulations. For completeness, information in relation to the Irish Enterprise Exchange (“IEX”), which falls outside of the scope of the Regulations, has been included in this report.

2. The Regulations

General

During 2009 the Board continued to carry out the functions of Competent Authority as set out in the Regulations. In the period, the main Competent Authority functions of the Board were delegated to and carried out by the Equity Listing and IEX Committee, the Debt Listing Committee, the Investment Funds Listing Committee and the Executive of the Irish Stock Exchange.

During 2009, the Irish Stock Exchange applied the conditions for admission to Official Listing in accordance with the Directive.

The Regulations require the following specific requirements to be addressed:

(a) Amendments to Listing Rules or Revisions of the Procedures

Three of the Exchanges Rulebooks were updated during the year. Copies of the updated Rulebooks are enclosed.

(b) Nature of all securities which are admitted to Official Listing and the Irish Enterprise Exchange (“IEX”).

A number of types of securities were admitted to Official Listing and IEX during 2009 as follows:

(i) States and their regional or local authorities

Four new Irish Government bonds and seventeen new Irish Treasury Bills were admitted to the Official List during 2009.

(ii) Companies and issuers other than States and their regional or local authorities.

The securities admitted were ordinary capital issues of Irish and foreign registered companies including equities, fixed interest, loan stock, preference stock, debentures, various types of debt securities, UCITS and investment funds.

All such securities admitted to Official Listing and IEX are listed in Appendix I to this report.

(c) Refusal of any applications for admission to Official Listing and IEX

In 2009 no applications for admission to the Official List or IEX were refused.

(d) Suspension or discontinuation of any Official Listing and IEX

Apart from One Government Bond and Twelve Treasury Bills maturing in 2009, the securities whose listing was suspended or cancelled during the period are set out in Appendix II.

(e) Any special arrangements which have been made with other Member States pursuant to Article 13 of the Directive

During the period under review it was necessary to co-operate and communicate with the Competent Authority in the United Kingdom regarding Irish securities listed on the Official List of the Financial

Services Authority (“FSA”). The Irish Stock Exchange has maintained a similar relationship with the FSA as existed during the previous year.

No other circumstances arose necessitating any special arrangements or co-operation with the Competent Authorities in other Member States.

Appendix 2 Euroclear UK & Ireland (EUI)

GENERAL

In order to facilitate the use of the EUI system, also known as the CREST system, for settlement of Irish securities, the Minister of State at the Department of Enterprise and Employment made the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996. As a supplementary condition for recognition, the Minister required the presentation of an annual report concerning the Irish market's activities in the EUI system. This paper constitutes Euroclear UK & Ireland's annual report for the twelve months ended 31 December 2009.

SUMMARY OF 2009

In 2009 there were several record peak settlement volume days, but total volumes were down on 2008 at circa 263,000 per day or over 66 million transactions for the whole year. Average daily cash and stock movements were £1.3 trillion and £2.0 trillion respectively. Development activities are mainly geared towards the future strategic aims of system platform consolidation across Euroclear Central Securities Depositories (CSDs), nevertheless we have continued to develop the EUI system. In February 2009 the EUI Tandem architecture was migrated onto faster Itanium machines thereby increasing system performance and capacity to handle transaction volatility. In September 2009 enhancements were made to the existing CREST service for Open Ended Investment Funds by allowing the settlement of both the cash and a notional stock element in the EUI system. This will facilitate timely reconciliation of stock positions between Issuers and Investor Agents, which has been a major market weakness and regulatory concern. This new service complements the message system offered by EMXCo, another U.K. subsidiary of the Euroclear group, to offer an automated, end-to-end funds service covering order routing, settlement and reconciliation. EUI implemented clearing tariff changes effective from 1st November 2009. The pricing changes further improve transparency by unbundling transaction reporting and stamp assessment from clearing. A separate tariff for netting has been implemented to improve the competitiveness of clearing and more accurately aligns to costs of the underlying services. During the year we connected ten Multilateral Trading Facilities (MTFs) to the EUI system bringing the operational number to fourteen with a further six anticipated. Euroclear Group acquired Xtrakter, the owner of TRAX, the trade reporting and matching system, as of 30 April 2009. This business fully complements the trade reporting service provided by EUI, as well as Euroclear Bank's Over the Counter (OTC) trade matching and routing service.

EUI SYSTEM

The EUI system was inaugurated in 1996 and is designed to provide:

- Real-time settlement for a range of corporate and government securities (from 2000) and money market instruments (from 2003), including those traded on the London Stock Exchange (LSE), the Irish Stock Exchange, various Multilateral Trading Facilities and shares in the Eurotop 300, NASDAQ 5000 and S&P 500 indices as well as several exchange traded funds through a book transfer mechanism, and
- The ability to hold securities in dematerialised electronic form, recorded as balances in the EUI system.

Participation in the EUI system is voluntary. Investors or persons who trade securities may choose whether or not to become EUI system members and hold their securities in electronic accounts maintained within the EUI system. Members transfer title to their securities by inputting electronic instructions to the system across secure networks established specifically for that purpose. These networks are provided by third party network providers (SWIFT and BT) and not by EUI; EUI's role is to accredit the providers against a series of technical specifications. Instructions that are input through this method are matched by the system to ensure that the key elements input by buyer and seller agree. At the point of settlement of a transaction:

- The securities that are the subject of the transaction are debited from the account of the seller and credited to the account of the buyer;
- The EUI system and the Bank of England have linked sterling settlement through the EUI system with inter-bank payments through RTGS on a real-time basis, such that delivery of stock through the EUI system is simultaneous with the transfer of sterling funds in RTGS. The Central Bank and Financial Services Authority of Ireland (CBFSAI) supplies euro liquidity on the GUI via the liquidity adjustment functionality;
- For securities that are eligible for electronic transfer of title (broadly, securities registered in the UK), the EUI system will confer full legal title to UK securities from the transferor to the transferee;
- For securities that are not ETT eligible (including Irish securities), an instruction is generated requiring the registrar to amend the register in respect of transfer. Legal title passes when the register is updated.

Both settlement banks and registrars interface with the EUI system for these purposes.

EUROCLEAR UK & IRELAND LIMITED: OWNERSHIP AND GOVERNANCE

In November 2002, CRESTCo Limited became a wholly owned subsidiary of Euroclear Bank SA/ NV following the transaction involving CRESTCo Limited and Euroclear Plc in September 2002. From January 2005, the Euroclear group was restructured with CRESTCo Limited being a wholly owned subsidiary of Euroclear

SA/ NV. On 1st July 2007 CRESTCo Limited's legal and operating name changed to Euroclear UK & Ireland Limited. Euroclear UK & Ireland Limited operates the EUI system. In the context of this 2009 report, the Euroclear group of companies (Euroclear group) comprises Euroclear SA/NV and its operating subsidiaries – Euroclear Bank, Euroclear UK & Ireland, Euroclear France, Euroclear Nederland, Euroclear Belgium, Euroclear Finland, Euroclear Sweden, EMXCo and Xtrakter (from April 2009). Euroclear SA/NV owns the group's shared securities processing platforms and delivers a range of services to the group's (International) Central Securities Depositories ((I)CSDs), EMXCo and Xtrakter. Euroclear Bank, Euroclear UK & Ireland, Euroclear France, Euroclear Nederland, Euroclear Belgium, Euroclear Finland, Euroclear Sweden, EMXCo and Xtrakter are sister companies, all under the ownership of Euroclear SA/ NV, which is ultimately owned by Euroclear Plc.

EUI's Board of Directors consists of representatives from both EUI and Euroclear SA/NV, and includes two independent directors. The directors as at 31 December 2009 were as follows:

Tim May (Chairman)	Euroclear SA/NV
Yannic Weber	EUI
Richard Crews	EUI
John Trundle Euroclear	SA/NV
Yves Pouillet Euroclear	SA/NV
Herschel Post	Independent
Mike Williams	Independent

EUROCLEAR UK & IRELAND BOARD SUB-COMMITTEES

The EUI Board has a number of sub-committees, whose membership includes people co-opted from outside the Board itself.

The following representatives of the Irish market participate in the Settlement Discipline Subcommittee:

- Brian Healy, Irish Stock Exchange, 28 Anglesea Street, Dublin 2
- Graham O'Brien, NCB Stockbrokers Ltd, 3 Georges Dock, Dublin 1

EUROCLEAR UK AND IRELAND'S OBLIGATIONS

EUI's obligations are set out in the agreements it enters into with its Users and Participants. Primarily (in very brief summary), its obligation is to provide the settlement services described in the CREST Manual. The CREST Manual sets out the functionality contained in the EUI system, and is available from the EUI web site (www.euroclear.co.uk).

IRISH PARTICIPATION IN THE EUI SYSTEM

THE IRISH STOCK EXCHANGE

EUI has entered into an agreement with the Irish Stock Exchange, under which the Exchange has appointed EUI to provide settlement services, and a Memorandum of Understanding, under which both parties agreed to share information with each other which is of mutual interest or importance.

IRISH SECURITIES

As of 31 December 2009 there were 351 Irish securities available for settlement in the EUI system.

IRISH PARTICIPANTS

The following Irish bodies were EUI system Participants as at 31 December 2009:

The following are Irish-based Brokers who are EUI system Participants:

- Bloxham Stockbrokers*
- Campbell O'Connor
- Davy Stockbrokers
- Dolmen Stockbrokers*
- Fexco Stockbroking*
- Merrion Capital Group
- NCB Stockbrokers**

* Outsourced their settlement processing to Pershing (Ireland) Ltd.

** Started using Societe Generale for settlement processing of some of their business in late 2006

Irish-based Custodians who are EUI System Members:

- Allied Irish Bank Securities Services
- Bank of Ireland Securities Services

Note: Citibank are not an Irish company, but operate within the International Financial Services Centre. Northern Trust and Merrill Lynch are also represented in the Irish market.

Irish-based Registrars who are EUI System Registrars

- Computershare (Ireland)
- Kerry Group plc
- Capita Corporate

Euro Settlement Banks

There are currently no Irish banks supporting settlement in the EUI system. They did not opt into the Delivery versus Payment in Central Bank Money service, which was released on 26 November 2001.

EUI SYSTEM LIAISON GROUPS

Euroclear chairs a series of liaison groups and working parties to consult upon and discuss particular matters of interest to various constituencies within the securities industry. At the time of the merger with CRESTCo Limited, Euroclear agreed to set up Market Advisory Committees (MACs) in each country for which it acts as central securities depository or central settlement system. The purpose of the MACs is to act as a primary source of consultation between the Euroclear group and the user communities on significant matters relating to their respective domestic markets. This consultation process is conducted with Euroclear management. The members of the MACs are chosen by the market and approved by the Board of Euroclear SA/NV. Irish members of the EUI system participated in the following liaison groups and working parties as at 31 December 2009:

Liaison Group or Working Party	Irish Representatives
Irish Market Advisory Committee (MAC)	Brian Healy – Chairman (Irish Stock Exchange) Kevin Petley (Irish Stock Exchange) Eileen Kelly (Goodbodys Stockbrokers) Eamonn Doyle (Davy Stockbrokers) Graham O’Brien (NCB Stockbrokers) Emer Nolan (Bank of Ireland Securities Services) Graham Shuttlewood (Royal Bank of Scotland) Pat O’Donoghue (Capita Corporate Securities) Albert Farrell (Bastow Charlton) Helen Young (Central Bank and Financial Services Authority of Ireland) Mary Farrell (Central Bank and Financial Services Authority of Ireland) Paul Shiels (National Treasury Management Agency) Donald Halligan (Computershare) Yannic Weber (Euroclear) – Euroclear Liaison
Retail Brokers Liaison Group	Cathal O’Connor (Davy Stockbrokers)

If you would like more information about these groups please contact:

Philippe Laurensy
Regional Director Relationship Management & Client Services
Euroclear SA/NV
c/o 33 Cannon Street
London EC4M 5SB
Tel (Brussels): +32 (0) 2 326 1452
Tel (London): +44 (0) 20 7849 0698
Email: philippe.laurensy@euroclear.com

CREST RULES

REGISTRARS SERVICE STANDARDS

Irish securities are not eligible for the Electronic Transfer of Title process, and consequently Ireland has not seen any changes to its regulations. Details are contained in rule 5 of the CREST Rules section of the CREST Manual available from the Information section of the EUI website (www.euroclear.co.uk).

The Standards have been fully in force since September 1997. During the course of 2009, Irish registrars incurred an aggregate penalty below £100, and therefore they were not penalised.

SETTLEMENT DISCIPLINE RULES

At the market's request, EUI operates the settlement discipline regime. The Settlement Discipline Committee (SDC) which operates under specific terms of reference and monitors a regime for improving the efficiency of settlement of UK and Irish securities in the EUI system. The SDC entirely consists of market practitioners and applies fines set by the market.

Details are contained in rule 6 of the CREST Rules section of the CREST Manual available from the Information section of the EUI website (www.euroclear.co.uk).

BAD DELIVERY RULES

Paragraph 19(a)(ii) of the Schedule to the Companies Act 1990 (Uncertificated Securities) Regulations 1996 requires the EUI system to have rules relating to situations in which a registrar is unable to register a transfer in response to a registration instruction from the EUI system in one of the (very limited) circumstances specified in Regulation 16 (which relate to court orders etc). Details are contained in rule 12 of the CREST Rules section of the CREST Manual available from the Information section of the EUI website (www.euroclear.co.uk).

The bad delivery reversal procedures were not implemented in respect of an Irish security during 2009.

CHANGES TO THE CREST RULES

The CREST Rules were most recently updated on 07 September 2009.

CORPORATE ACTIONS

The following notable corporate actions involving Irish securities were processed during 2009:

- CRH Rights Issue – March 2009
- Irish Continental Partial Redemption – May 2009
- Independent News & Media Rights Issue – November 2009

EUROPEAN MATTERS

THE SETTLEMENT FINALITY DIRECTIVE

Directive 98/26/EC of the European Parliament (the Settlement Finality Directive) was implemented in Irish law in the European Communities (Finality of Settlement in Payment and Securities Settlement Systems) Regulations, 1998 (SI No 539 of 1998, “the Settlement Finality Regulations”) on 31 December 1998. The Settlement Finality Regulations provide for the automatic designation of bodies which are “payment systems” within the meaning of section 5 of the Central Bank Act, 1997.

The EUI system is a payment system for the purposes of the Central Bank Act, 1997 and, accordingly, is a designated system pursuant to the Settlement Finality Regulations. Transfers of Irish securities by means of the EUI system therefore have the benefit of the protection of the Settlement Finality Regulations.

Details are contained in rule 13 of the CREST Rules section of the CREST Manual available from the

Information section of the EUI website (www.euroclear.co.uk).

LINKS BETWEEN OTHER SETTLEMENT SYSTEMS

EUI provides trade settlement and asset recording for a range of American, Canadian, European and Australian securities through links with Euroclear Bank, SIX SIS Ltd (SIS) and DTCC.

In consequence, Irish investors are able to hold and settle a broad range of Western European and North American securities in their EUI system accounts.

EUROCLEAR UK & IRELAND FEES AND TARIFFS

Tariff details are available from the Information section of the EUI website (www.euroclear.co.uk).

Please address any queries on this report to:

Alison Thomas
Head of Control
Euroclear UK & Ireland Limited
33 Cannon Street
London EC4M 5SB

Tel: +44 (0) 20 7849 0024
Fax: +44 (0) 20 7849 0134
Email: alison.thomas@euroclear.co.uk

Appendix 3 The Companies Liquidation Account as of 31 December 2009

COMPANY NAME	DEPOSIT €
Keenan Bros. Ltd	9,445.12
Clare Textiles	251.62
WKLR Supporters	2,129.14
Printing Appliances Sales & Services	2,002.54
Athboy Co-Op Ltd	33,324.32
McCrae Ltd	187.17
Metro Investments	107.36
Impshire Thoroughbreds	56,549.28
Sun Laboratories Irl Ltd	7,420.02
Lazard Global Liquidity Fund	58,340.01
Decvale Ltd	263.78
MJB Developments Ltd	218.79
Ranks (Ireland) Ltd	48.66
Mornington Fish Products Ltd	13,553.27
George Bell (Agencies) Ltd	519.53
Eisc Teoranta	1,938.50
AP Byrne Ltd	3,672.19
Meridian Capital Markets	11,756.62
Century Communications Ltd.	8.00
Seirbhisi na nOilean Teoranta	2,097.00
Sliogan Eisc na nOilean Teoranta	1,758.00
Carmel International Textiles Ltd.	5,034.00
Private Motorists Protection Assoc. Ltd.	1,792.84
PMPA Oil Co Ltd	429.63
Farm Fresh Frozen Foods	4,328.96
H Williams (Tallaght) Ltd	6,869.87
PMPA Garage (Arklow) Ltd	913.85
PMPA Garage (Athy) Ltd	429.89
PMPA Garage (Carrick) Ltd	280.28
PMPA Garage (Clonmel) Ltd	4,388.00

PMPA Garage (Dundalk) Ltd	2,444.62
PMPA Garage (Kells) Ltd	362.80
PMPA Garage (Longmile) Ltd	16,713.08
PMPA Garage (North Strand) Ltd	5,696.59
PMPA Garage (Athlone) Ltd	75.95
PMPA Garage (Ballina) Ltd	3,435.55
PMPA Garage (Blayney) Ltd	370.69
PMPA Garage (Bray) Ltd	1,268.85
PMPA Garage (Cashel) Ltd	1,278.86
PMPA Garage (Cavan) Ltd	1,103.17
PMPA Garage (Letterkenny) Ltd	411.52
PMPA Garage (Middleton) Ltd	2,085.04
PMPA Garage (Mullingar) Ltd	166.30
McCairns Motors (Waterford) Ltd	1,782.39
Orbitex Investment Funds PLC	12,281.41
Newbridge Holdings	9,824.56
PMPA Garage (Thurles) Ltd	968.37
James McMenamin Ltd	3,823.00
Clara Candy Ltd	694.57
Indequip Ltd	585.11
International Motor Factors (Ire) Ltd	607.13
PMPA Garage (Roscrea) Ltd	231.14
PMPA Garage (Portlaoise) Ltd	777.99
North Garage (PMPA) Ltd	503.71
Merrill Lynch Defined Returns PLC	108,620.09
Dublin Cargo Handling Ltd	8,427.84
Close FTSE 100Income & Growth Fund PLC	15,415.25
Transaer International Airlines Ltd	7,254.14
Mark Synnott (Life & Pensions) Brokers Ltd	3,108.59
GLG Investments 2 Plc	7,916.78
The Equitable Insurance Company Ltd	51,493.41
Crannac Co-Operative Society Ltd	95,947.20
PCS Adjusters Ltd	761.18
Frank McGivern Ltd	616.37
Keno Fun Foods Ltd	300.83
Swiss Life Funds (IRL) Plc	14,100.48
Hospitals' Trust (1940) Ltd	801.98
White Strand Motor Inn Ltd	1,057.24
Interclaim Recovery Ltd	1,283.00
Malachy Quinn (Machinery) Ltd	462.67

Iona Software Ltd	2,931.83
Mullingar Livestock Agency Ltd	28,033.44
Kerrigan Insurances Ltd	516.38
Key Tech Enclosures Ltd	975.41
Irish Savings Building Society	56,806.54
Merrill Lynch Performance Fund	28,300.39
Killeavy Properties Ltd	411.83
BDO Simpson Xavier	94,791.98
Aherlow Hotel Ltd	1,106.73
Dan McInenney & Sons	3,503.80
J Stafford (Mackeys Seeds Ltd)	89,999.15
FFC Financial Future Corp PLC	146,222.15
Saturn Fulfilment Services Ltd	822.02
Liam Dowdall	14,900.07
A Neary (Endeavor Holiday Homes)	8,400.56
O/L CH Ireland INC	594.42
Merchant Banking Ltd	35,938.25
O'Flynn Exhams & Partners	3,667.77
Daniel Delaney	2,171.47
O'Flynn Exhams & Partners	3,828.10
William McCann	11,565.22

TOTAL

1,141,453.94

Appendix 4 Company Law Sections contact information

Department of Enterprise, Trade and Innovation

The Company Law sections of the Department of Enterprise, Trade and Innovation are located in

Earlsfort Centre,
Lower Hatch Street,
Dublin 2.

Telephone Number: 00353 1 6312121

Locall: 1890220222

The Department's website is www.entemp.ie

Company and Co-operative law related sections

Company Law Administration

This Section administers the existing Companies Acts and related legislation which includes dealing with policy matters and drafting amending legislation when required. The section also has certain responsibilities in relation to [Office of the Director of Corporate Enforcement](#), the [Companies Registration Office](#) and the [Irish Auditing and Accounting Supervisory Authority](#).

Contact information for the section can be found at - [Company Law Administration Section](#)

Company Law EU/Legislation

The preparation and drafting of legislation in relation to company law, the negotiation of EU proposals on company law and the transposition of EU proposals into domestic law.

Contact information for the section can be found at - [Company Law EU/Legislation](#)

Company Law Review and Consolidation

The Section serves as a secretariat of the Company Law Review Group. The main tasks of the Section are:

- to expedite the work programme of the Group and to produce, every second year, the substantive report which results from the work programme, and
- to progress the recommendations in the Review Group, subject to Ministerial/Government approval, to the legislative stage

Contact information for the section can be found at - [Company Law Review and Consolidation Section](#).

The Company Law Review Group website is <http://www.clr.org>

Company Law Financial Services

In addition to handling a number of company law issues applying to the generality of companies, the role of this unit is to address issues relating to way Company Law interacts with the Financial Services Sector generally and with the Collective Investment Funds industry in particular. Some legislation, outside of company law, specific to Collective Investment Funds is also dealt with by the unit.

Contact information for the section can be found at - [Company Law \(Financial Services\)](#)

Co-operative Legislation Unit

The main role of the unit is to advise and assist the Minister in relation to the carrying out of his statutory, policy and managerial responsibilities under the Industrial and Provident Societies Acts, the Friendly Societies Acts and the Trade Union Acts and this includes responsibility for monitoring and supporting the Registrar of Friendly Societies. This work relates both to the current legislative and regulatory framework and to proposals for changes to the current regime.

Contact information for the section can be found at - [Co-operative Legislation Unit](#)