

PART 15

FUNCTIONS OF REGISTRAR AND OF REGULATORY AND ADVISORY BODIES

Chapter 1

Registrar of Companies

Registration office, “register”, officers and CRO Gazette.

876. (1) The Minister shall maintain and administer an office or offices in the State at such places as the Minister thinks fit for the purposes of –

- (a) the registration of companies under this Act; and
- (b) the performance of the other functions under this Act expressed to be performable by the Registrar.

(2) A reference to this Act to the register (where the context is not that of a register to be kept by a company or other body) is a reference to, as appropriate –

- (a) the register to be kept by the Registrar (which the Registrar is empowered by this subsection to keep) in which notices or other documents, information or things delivered in pursuance of this Act to the Registrar are to be registered or recorded (and in which, in particular, in the case of a registration of a company, the fact of the company's incorporation is to be disclosed); or
- (b) the particular register that a provision of this Act requires the Registrar to keep for a special purpose,

but any such register as is mentioned in *paragraph (b)* shall, for the purposes generally of this Act, be regarded as forming part of the first-mentioned register.

(3) The Minister may appoint a registrar (who shall be known as the “Registrar of Companies”) and such assistant registrars as he or she thinks necessary for any of the purposes referred to in *subsection (1)*, and may make regulations with respect to their duties and may remove any persons so appointed.

(4) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with any of the purposes referred to in *subsection (1)*.

(5) A person appointed under section 368 of the Act of 1963 before the commencement of this section and who holds office immediately before such commencement (and, in particular the person mentioned in *subsection (6)*) shall continue in office for the unexpired period of his or her term unless he or she sooner retires, resigns or dies or is removed from office.

(6) The person referred to in *subsection (5)* is the person who holds the office bearing the title “Registrar of Companies” and that person shall continue to be known by that title for so long as that person continues to hold office in accordance with that subsection.

(7) The electronic gazette maintained by the Registrar before the commencement of this section and known as the “Companies Registration Office Gazette” shall continue to be maintained by the Registrar and is referred to in this Act as the “CRO Gazette”.

Performance of duties of Registrar.

877. (1) Any act referred to in subsection (4) of section 368 of the Act of 1963 which, before 21 December 1999, was done by –

- (a) an assistant registrar appointed under subsection (2) of that section; or
- (b) any other person employed in the office of the Registrar to perform generally duties under any enactment referred to in that subsection (4),

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

(2) Any act required or authorised by –

- (a) this Act;
- (b) the Limited Partnerships Act 1907; or
- (c) the Registration of Business Names Act 1963,

to be done to or by the Registrar, the registrar of joint stock companies or a person referred to in the enactment as “the registrar”, as the case may be, may be done to or by a registrar or assistant registrar appointed under *section 876(3)*, a person continued in office by virtue of *section 876(5)* or any other person so authorised by the Minister.

Fees.

878. (1) In respect of the doing of the following (where the provision concerned does not, itself, expressly provide for the payment of a prescribed fee in that behalf), namely -

- (a) the registration of a company;
- (b) the registration of any notice, return or other document; or
- (c) the doing of any other thing that the Registrar is required or authorised by or under this Act to do (whether, at the request or

direction of, or on application of any person, or otherwise in the circumstances provided by or under this Act), regulations may be made by the Minister requiring the payment to the Registrar of a fee, of an amount specified in the regulations, by the person concerned.

(2) In *subsection (1)* “person concerned” means –

- (a) in a case where the registration is to be effected or the other thing concerned is to be done by the Registrar at the instance of a person – that person; or
- (b) in any other case - the person who is specified in the regulations to be the person concerned for the purpose of that case (and the person so specified may such person as the Minister reasonably determines to be the person for whom the principal benefit will enure by the thing concerned being done by the Registrar).

(3) Different amounts of fees may be so specified for different classes of case in which a thing falling within any particular paragraph of *subsection (1)* is done and any such class of case may be defined in the regulations concerned by reference to such matter or matters as the Minister considers reasonable and appropriate for the purpose.

(4) Without prejudice to the generality of *subsection (3)*, a different amount of fee may be so specified in respect of the doing of a foregoing thing, where the step or steps by another person, in consequence of, or on foot of which, the thing is authorised or required to be done, have not been taken in observance of a time limit specified by or under this Act.

(5) In a case falling within *subsection (4)*, any different amount of fee that is specified may be specified by reference to the period of time that has elapsed between the latest date, in observance of the particular time limit specified by or under this Act, by which the one or more steps concerned ought to have been taken and the date on which they have been taken.

(6) Where regulations under this section require, in respect of the doing of a thing referred to in *subsection (1)*, the payment of a fee of an amount specified in them and the fee of the specified amount is not paid to the Registrar, then, subject to any special cases that the Minister may deem it to expedient to provide for in the regulations, the Registrar is not obliged to do (where the Registrar would otherwise be so obliged) the thing concerned.

(7) *Subsection (6)* is in addition to, and not in derogation from, any particular provision of or under this Act that provides or the effect of which is that a fee of a prescribed amount must be paid to the Registrar as a condition, or one of the conditions, for the Registrar's doing the particular act concerned.

(8) All fees paid to the Registrar in pursuance of this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Annual report by Registrar

879. (1) The Registrar shall, as soon as may be, but not later than 4 months, after the end of each year, make a report in writing to the Minister of the Registrar's activities during that year and the Minister shall cause copies of the report to be laid before each House of the

Oireachtas not later than 6 months after the end of that year.

(2) The Minister may, after consultation with the Registrar, prescribe the form of a report under this section and the manner in which any matter is to be addressed in such a report.

Inspection and production of documents kept by Registrar.

880. (1) On payment of the prescribed fee, any person may -

- (a) inspect any document kept by the Registrar;
- (b) require the Registrar to certify a certificate of incorporation of any company;
- or
- (c) require the Registrar to certify a copy of or extract from any other document or any part of any other document kept by the Registrar.

(2) A process for compelling the production of any document kept by the Registrar -

- (a) shall not issue from any court except with the leave of that court; and
- (b) if so issued, shall state that it is issued with the leave of the court.

Admissibility of certified copy or extract.

881. (1) A copy of or extract from any document registered with and kept by the Registrar shall be admissible in evidence in all legal proceedings and be of the same evidential effect as the original document if it has been certified as a true copy under the signature of the Registrar, an assistant registrar or another officer authorised by the Minister.

(2) For the purposes of *subsection (1)* it shall not be necessary to prove the official position of the person whose signature appears on the copy concerned.

Certificate by Registrar admissible as evidence of facts stated.

882. A certificate in writing and signed by the Registrar shall be admissible in all legal proceedings as evidence without further proof of any of the following facts stated in the certificate unless the contrary is shown:

- (a) the contents of a register kept by the Registrar;
- (b) the date on which a document was filed or registered with or delivered to the Registrar;
- (c) the date on which a document was received by the Registrar; or
- (d) the most recent date (if any) on which a requirement under this Act was complied with.

Disposal of documents filed with Registrar

883. The Registrar shall, after the expiration of 20 years after the date of dissolution of a company, send all the documents filed in connection with such company to the National Archives.

Registrar may apply system of information classification.

884. (1) The Registrar may, as he or she considers appropriate -

- (a) apply a system of classification to information to which this section applies;

and

- (b) assign symbols of identification to persons or classes of persons to whom any such information relates.

(2) This section applies to any information that, under this Act, is required to be delivered to the Registrar and is so received by the Registrar.

(3) The Minister may make regulations -

- (a) requiring that the symbol assigned by the Registrar to a person individually or as one of a class of persons shall be entered on all documents that are required under this Act to contain the name of that person; and
- (b) specifying particular persons whose duty it shall be to comply or ensure compliance with the regulations.

(4) If a person is required under a regulation made under *subsection (3)* to comply or ensure compliance with a requirement referred to in *subsection (3)(a)* and fails to do so, the person shall be guilty of a category 3 offence.

Delivery to Registrar of documents in legible form.

885. (1) This section applies to the delivery under any provision of this Act of a document to the Registrar in legible form.

(2) The document shall -

- (a) state in a prominent position the registered number of the company to which

the document relates; and

- (b) comply with regulations (if any) prescribing -
 - (i) the form and contents of the document;
 - (ii) requirements to enable the Registrar to copy the document.

(3) Regulations made for the purposes of this section may prescribe different requirements for the form and content of a document with respect to different classes of document.

(4) In this section, “document” includes any periodic account, abstract, statement or return.

Documents may be delivered to Registrar in non-legible form.

886. (1) This section applies to a document delivered to the Registrar in non-legible form (whether by electronic means or otherwise).

(2) A requirement of this Act to deliver a document to the Registrar, or to deliver a document in a prescribed form, shall be satisfied if the information that would otherwise be contained in the document is communicated to the Registrar in a prescribed non-legible form.

(3) A requirement of this Act that a document shall be signed or sealed shall be satisfied if the document is authenticated in the prescribed manner.

(4) The document shall -

- (a) contain in a prominent position the registered number of the company to which the document relates;
- (b) comply with regulations (if any) prescribing -

- (i) requirements (including requirements as to the manner in which it is to be furnished to the Registrar) to enable the Registrar to read and copy the document; and
- (ii) any other requirements.

(5) The Minister may, by regulations, make further provision with respect to the application of this section in relation to instantaneous forms of communication.

(6) Regulations made for the purposes of this section may prescribe different requirements with respect to different classes of document and different forms of communication.

(7) In this section, “document” includes any periodic account, abstract, statement or return.

Registrar’s notice that document does not comply.

887. (1) On receipt of a non-complying document the Registrar may, in his or her discretion

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- (a) serve on the person delivering the document (or, if there is more than one such person, any of them) a notice that the document does not comply;
- or
- (b) neither serve such a notice nor otherwise advise or give notice to any such person that the document does not comply,

and the provision made by the following provisions of this section, in a case where the course under *paragraph (a)* is taken by the Register, is not be read as implying that, in a case where the course under *paragraph (b)* is taken by the Registrar, any legal consequences arising from

the fact that a non-complying document has been delivered are thereby avoided.

(2) A notice under *subsection (1)(a)* shall state in what respects the document is a non-complying document.

(3) A document referred to in *subsection (1)* shall be deemed not to have been delivered to the Registrar if -

- (a) if it is the subject of a notice served under *subsection (1)(a)*; and
- (b) the Registrar has not received within 14 days after the date of service of the notice a replacement document that -
 - (i) complies with the requirements referred to in *subsection (4)(b)*; or
 - (ii) is not rejected by the Registrar for non-compliance with those requirements.

(4) In this section, a non-complying document is a document that -

- (a) is required or authorised to be delivered to the Registrar under this Act; and
- (b) fails to comply with—
 - (i) the relevant requirements of this Act (and, in particular, the provisions of any section under which the requirement to deliver the document to the Registrar arises) or regulations made under this Act; or
 - (ii) any requirements imposed by or under any other enactment relating to the completion of a document and its delivery to the Registrar.

Supplementary and clarificatory provisions for *section 887*.

888. (1) For the purposes of any provision which —

(a) imposes a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention; or

(b) provides for the payment of a fee in respect of the registration of a document, being a fee of a greater amount than the amount provided under the provision in respect of the registration of such a document that has been delivered to the Registrar within the period specified for its delivery to him or her,

no account shall be taken of the period between the delivery of the original document referred to in *section 887(1)* and the end of the period of 14 days after the date of service of the notice under *section 887(1)(a)* in relation to it (but only if, before the end of the latter period, a replacement document that complies with the requirements referred to in *section 887(4)(b)* is delivered to the Registrar).

(2) Nothing in this section or *section 887* shall have the effect of making valid any matter which a provision of this Act or of any other enactment provides is to be void or of no effect in circumstances where a document in relation to it is not delivered to the Registrar within the period specified for the document's delivery to him or her.

Chapter 2

Irish Auditing and Accounting Supervisory Authority

Interpretation (Chapter 2).

889. (1) In this Chapter -

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

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

“Act of 2003” means the Companies (Auditing and Accounting) Act 2003;

“amount of turnover” has the same meaning as it has in *section 345*;

“balance sheet total” has the same meaning as it has in *section 345*;

“board” means the board of directors of the Supervisory Authority;

“chief executive officer” means the chief executive officer of the Supervisory Authority;

“designated body” means a body that, under *section 891(2)*, is a designated body at the relevant time;

“disciplinary committee” means any disciplinary committee or tribunal (however called) of a prescribed accountancy body;

“member”, in relation to a prescribed accountancy body, means –

(a) a person; or

(b) a firm,

that is, or was at the relevant time, subject to the investigation and disciplinary procedures approved for that body under –

(i) *section 894(2)(c)*;

- (ii) section 9(2)(c) of the Act of 2003; or
- (iii) the Act of 1990, whether before or after the amendments of that Act that were made by section 32 of the Act of 2003;

“prescribed accountancy body” means-

- (a) a recognised accountancy body; or
- (b) any other body of accountants that is prescribed;

“recognised accountancy body” means a body of accountants recognised under *section 918* for the purposes of the 2010 Audits Regulations or *section -* ;*

*** This is the section that will appear either in Pillar B or in revised Industrial and Provident /Friendly Societies legislation (the sponsoring and enactment of which is under consideration by the Department) and which will relate to the qualification of public auditors. Pending a final decision on where the law on public auditor qualifications is to be contained, that section is referred to subsequently in this Part as the “public auditors section”;**

“reserve fund” means the fund referred to in *section 907*;

“standards”, in relation to a prescribed accountancy body, means the rules, regulations and standards that body applies to its members and to which, by virtue of their membership, they are obliged to adhere;

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death;

“Supervisory Authority” means the Irish Auditing and Accounting Supervisory Authority.

(2) In this Chapter, “material interest” is to be read in accordance with section 2(3) of the Ethics in Public Office Act 1995.

Continuance of designation of Irish Auditing and Accounting Supervisory Authority and other transitional matters

890. (1) The company, namely, the Irish Auditing and Accounting Supervisory Authority, that was designated under section 5 of the Act of 2003 before the commencement of this section as the body to perform the functions of the Supervisory Authority under that Act shall be the Supervisory Authority for the purposes of this Chapter.

(2) A person appointed to the board of the Irish Auditing and Accounting Supervisory Authority before the commencement of this section and who holds office immediately before such commencement shall continue in office for the unexpired period of his or her term unless he or she sooner retires, resigns or dies or is removed from office; this subsection applies notwithstanding the cessation of membership of that Authority effected by this Chapter of certain bodies (corporate and unincorporated) that had nominated persons for appointment to that board.

(3) Without prejudice to the generality of the preceding subsections, the enactment of this Act does not otherwise affect –

- (a) the corporate existence of the Irish Auditing and Accounting Supervisory Authority; and
- (b) the continuance in being of the membership of it by the bodies corporate and individuals which or who were members of it immediately before the

commencement of this section,

but, as regards that membership –

- (i) subject to *section 891(2)* (which effects a reduction in the number of members from that provided in the Act of 2003); and
- (ii) subject (as was provided by the corresponding provisions of the Act of 2003) to the provisions of this Chapter enabling the termination, change and increase of that membership.

Membership of Supervisory Authority.

891. (1) The Supervisory Authority is to consist of the following members:

- (a) each prescribed accountancy body that is a body corporate;
- (b) in the case of a prescribed accountancy body that is not a body corporate, an individual or body corporate nominated by that prescribed accountancy body to be a member;
- (c) each designated body that is a body corporate;
- (d) in the case of a designated body that is not a body corporate, an individual or body corporate nominated by that designated body to be a member.

(2) Unless a regulation under *section 933(1)(b)* provides otherwise, each of the following is, on and from the commencement of this section, a designated body for the purposes of *subsection (1)* :

- (a) the Director of Corporate Enforcement;
- (b) the Central Bank;
- (c) the Irish Stock Exchange;

- (d) the Revenue Commissioners;
- (e) any body prescribed under *section 933(1)(b)* as a designated body.

Amendment to memorandum or articles.

892. An amendment to the memorandum of association or articles of association of the Supervisory Authority takes effect only if the alteration is made with the Minister's prior approval.

Objects of Supervisory Authority.

893. (1) The principal objects of the Supervisory Authority which are to be included in its memorandum of association are to -

- (a) supervise how the prescribed accountancy bodies regulate and monitor their members;
- (b) promote adherence to high professional standards in the auditing and accountancy profession;
- (c) monitor whether the financial statements or accounts of certain classes of companies and other undertakings comply with this Act (or, as the case may be, this Act as applied by the 1993 Accounts Regulations) and, where applicable, Article 4 of the IAS Regulation; and
- (d) act as a specialist source of advice to the Minister on auditing and accounting matters.

(2) Nothing in this section prevents or restricts the inclusion in that memorandum of

association of all objects and powers, consistent with this Chapter, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of those principal objects.

Functions of Supervisory Authority.

894. (1) The Supervisory Authority shall do all things necessary and reasonable to further its objects.

(2) Without limiting its functions under *subsection (1)*, the functions of the Supervisory Authority are to -

- (a) grant recognition to bodies of accountants for the purposes of the 2010 Audits Regulations and the public auditors section;
- (b) attach under *section 919* terms and conditions to the recognition of bodies of accountants, including terms and conditions -
 - (i) requiring changes to, and the approval by the Supervisory Authority of, their regulatory plans; and
 - (ii) requiring their annual reports to the Supervisory Authority on their regulatory plans to be prepared in the manner and form directed by the Supervisory Authority;
- (c) require changes to and to approve —
 - (i) the constitution and bye laws of each prescribed accountancy body, including its investigation and disciplinary procedures and its standards; and
 - (ii) any amendments to the approved constitution or bye laws of each

- prescribed accountancy body, including amendments to its investigation and disciplinary procedures and to its standards;
- (d) conduct under *section 921* enquiries into whether a prescribed accountancy body has complied with the investigation and disciplinary procedures approved for that body under *paragraph (c)* or referred to in *subsection (1)(a)(ii)* or *(iii)* or *(1)(b)(ii)* of that section;
 - (e) impose under *section 921* sanctions on prescribed accountancy bodies;
 - (f) undertake under *section 922* investigations into possible breaches of the standards of a prescribed accountancy body;
 - (g) supervise how each recognised accountancy body monitors its members and to undertake under *section 924* reviews of those members;
 - (h) co-operate with the recognised accountancy bodies and other interested parties in developing standards relating to the independence of auditors and monitor the effectiveness of those standards;
 - (i) monitor the effectiveness of provisions of this Act and the 2010 Audits Regulations relating to the independence of statutory auditors;
 - (j) supervise the investigation and disciplinary procedures of each prescribed accountancy body, including by requiring access to its records and by requiring explanations about the performance of its regulatory and monitoring duties;
 - (k) co-operate with the prescribed accountancy bodies and other interested parties in developing auditing and accounting standards and practice notes;
 - (l) review under *sections 925* and *926* whether financial statements or accounts of the companies and undertakings referred to in that section comply with this

Act (or, as the case may be, this Act as applied by the 1993 Accounts Regulations) and, where applicable, Article 4 of the IAS Regulation, and make applications to the court to ensure compliance;

- (m) arrange for the regulation and supervision by recognised accountancy bodies of statutory auditors referred to in Regulation 25(2) of the 2010 Audits Regulations;
- (n) perform the functions conferred on it by transparency (regulated markets) law (within the meaning of *Chapter* - [**Chapter corresponding to Part B2, Chapter 14**]) in respect of the matters referred to in Article 24(4)(h) of the Transparency (Regulated Markets) Directive (within the meaning of that Chapter);
- (o) perform the functions (and in particular the functions of public oversight) conferred on it by the 2010 Audits Regulations;
- (p) perform any other duties or discharge any other responsibilities imposed on it by this Act.

General powers.

895. (1) The Supervisory Authority has the power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions and that is not inconsistent with any enactment.

(2) A power conferred by *subsection (1)* is not to be considered to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on the Supervisory Authority.

(3) The Supervisory Authority may adopt rules and issue guidelines concerning any matter that relates to its functions.

(4) The Supervisory Authority may apply to the court for an order under *section 931(7)* compelling—

- (a) a prescribed accountancy body to comply with a rule adopted or guideline issued under *subsection (3)*;
- (b) a recognised accountancy body to comply with a term or condition attached under section 192 of the Act of 1990 (before or after the amendment of that Act by section 32 of the Act of 2003) or *section 919* to the recognition of that body; or
- (c) a person on whom a relevant obligation or obligations is or are imposed to comply with that obligation or those obligations,

if, in the Authority's opinion, the body or other person concerned may fail or has failed to comply with the rule, guideline, term or condition or obligation or obligations, as the case may be.

(5) In *subsection (4)*, the reference to a relevant obligation or obligations that is or are imposed on a person is a reference to an obligation or obligations that is or are imposed on the person by—

- (a) provisions of transparency (regulated markets) law (within the meaning of *Chapter - [Chapter corresponding to Part B2, Chapter 14]* that implement

Article 24(4)(h) of the Transparency (Regulated Markets) Directive (within the meaning of that Chapter); or

- (b) rules adopted by the Supervisory Authority under *subsection (3)* concerning the matters that relate to its functions under *section 894(2)(n)*.

Board of directors.

896. (1) Subject to a regulation under *section 933(1)(c)* and to *section 890(2)*, the board of directors of the Supervisory Authority is, on and from the commencement of this section, to consist of—

- (a) not more than 8 directors (including the chairperson and the deputy chairperson) appointed by the Minister under *subsection (2)*; and
- (b) the person holding the office of chief executive officer who, by virtue of that office, is a director.

(2) Subject to a regulation under *section 933(1)(c)*, the directors appointed by the Minister shall, on and from the commencement of this section, include—

- (a) subject to *paragraphs (b) and (c)*, 2 persons, each of whom is nominated by the prescribed accountancy bodies by a decision taken by a majority of those bodies;
- (b) if there is no such decision taken by those bodies as respects the nomination, under *paragraph (a)*, of those 2 persons, 2 persons, each of whom is chosen by the Minister from amongst the persons who had been proposed by any one or more, or all, of those bodies for nomination under that paragraph;

(c) if there is such a decision taken by those bodies as respects the nomination, under *paragraph (a)*, of one, only, of those persons, 2 persons –

(i) one of whom is the person so nominated by those bodies; and

(ii) the other of whom is chosen by the Minister from amongst the persons who had been proposed by any one or more, or all, of those bodies for nomination under that paragraph;

(d) 2 persons nominated by the Minister, one of whom—

(i) is neither an officer or employee of the Minister nor a member, officer or employee of a prescribed accountancy body; and

(ii) is appointed as chairperson by the Minister;

and

(e) for each designated body, one person nominated by that body.

(3) For the purposes of *subsection (2)* –

(a) a majority decision of the prescribed accountancy bodies is taken where a majority of those bodies signify in writing that they have nominated the particular person or persons (and the number of prescribed accountancy bodies by reference to which that majority is to be reckoned excludes any of the prescribed accountancy bodies that abstain from taking a decision on the matter); and

(b) without prejudice to the generality of *paragraphs (b) and (c)* of that subsection, the power of the Minister under that *paragraph (b) or (c)*, as the case may be, is exercisable where the prescribed accountancy bodies are evenly divided as to the decision to be taken concerning the nomination of a person.

(4) Subject to a regulation under *section 933(1)(c)*, the board shall not include at any one time more than 3 directors appointed under *subsection (2)* who are members of prescribed accountancy bodies, and of those 3 directors—

(a) two may be nominees of the prescribed accountancy bodies; and

(b) one may be a nominee of a designated body.

(5) If, at any time, more than one designated body proposes to nominate a member of a prescribed accountancy body for appointment to the board, the designated bodies proposing to do so shall decide among themselves which one of them is to nominate such a member.

(6) The directors may select the deputy chairperson from among those directors who are not members of a prescribed accountancy body.

(7) The term of office of a director appointed under *subsection (2)* shall be specified by the Minister when appointing the director and, subject to *section 897(5)*, may not be less than 3 or more than 5 years.

(8) The members of the Supervisory Authority may not instruct the directors, at any meeting of those members or by any other means, regarding the carrying out of their duties as directors of the Supervisory Authority.

Supplementary provisions in relation to board of directors.

897. (1) *Section 144* (as applied by *section* – [**section corresponding to Part B4, Head 2(1)**]) does not apply to the Supervisory Authority.

(2) A director may resign by letter addressed to the Minister and copied to the Supervisory Authority and the resignation takes effect on the date the Minister receives the letter.

(3) At any time, the Minister may remove for stated reasons, any director appointed under *section 896(2)*, including a director nominated under *section 896(2)(d)*.

(4) The Minister shall fill any vacancy that arises on the board as a consequence of the resignation or removal of a director by appointing a replacement nominated (or, as the case may be, chosen by the Minister) in the same manner as the replaced director.

(5) A director appointed under *subsection (4)* to replace another holds office for the remainder of the replaced director's term of office and the same terms and conditions apply to the new appointee.

(6) The directors may act despite one or more vacancies in their numbers.

(7) On and from the commencement of this section, a person is disqualified from appointment to the board for so long as he or she is -

(a) entitled under the Standing Orders of either House of the Oireachtas to sit in

that House;

- (b) a member of the European Parliament; or
- (c) a member of a local authority.

(8) On and from the commencement of this section, a member of the board shall cease to hold office on—

- (a) being nominated as a member of Seanad Éireann;
- (b) being nominated as a candidate for election to either House of the Oireachtas or to the European Parliament;
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy; or
- (d) becoming a member of a local authority.

Chief executive officer (including provision of transitional nature).

898. (1) The directors appointed under *section 896(2)* shall appoint a person to be the chief executive officer of the Authority (to be known and in this Act referred to as the “chief executive officer”) to—

- (a) carry on, manage and control generally the administration and business of the Supervisory Authority; and
- (b) perform any other functions that may be determined by the board.

(2) The chief executive officer holds office on and subject to the terms and conditions (including terms and conditions relating to remuneration and allowances) that the directors appointed under *section 896(2)* may, with the approval of the Minister given with the consent

of the Minister for Finance, determine.

(3) The directors appointed under *section 896(2)* may remove the chief executive officer from office at any time.

(4) Without prejudice to the generality of *section 890(2)*, the person who held the office of Chief Executive Officer of the Irish Auditing and Accounting Supervisory Authority immediately before the commencement of this section shall continue in office for the unexpired period of his or her term unless he or she sooner retires, resigns or dies or is removed from office.

Work programme.

899. (1) The Supervisory Authority shall continue to prepare and submit to the Minister, for each successive period of 3 years beginning on the day after the last day of the period covered by the preceding such programme, a work programme.

(2) For the purposes of the initial operation of *subsection (1)*, the reference in it to the preceding work programme is a reference to the work programme last prepared by the Supervisory Authority under section 13 of the Act of 2003.

(3) In preparing the work programme, the Supervisory Authority shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources.

(4) The work programme shall include the following information:

- (a) the key strategies and activities that the Supervisory Authority will pursue to further its objects and to perform its functions;
- (b) the outputs that the Supervisory Authority aims to achieve and against which its performance will be assessed;
- (c) the staff, resources and expenditure (including an annual programme of expenditure approved under *section 900*) that will be required to pursue the strategies and activities referred to in *paragraph (a)*.

(5) The Minister shall not give directions to the Supervisory Authority concerning the discharge of a work programme, including an amended or supplementary work programme.

(6) Subject to *subsection (7)*, the Minister shall ensure that a copy of each work programme (including each revised, amended or supplementary work programme) is laid before each House of the Oireachtas not later than 60 days after the date on which it was submitted to the Minister.

(7) If a revised work programme (including a revised amended or supplementary work programme) is submitted to the Minister before the unrevised work programme is laid before the Houses of the Oireachtas as required by *subsection (6)*, only the revised work programme need be laid before the Houses.

Annual programme of expenditure.

900. (1) The annual programme of expenditure referred to in *section 899(4)(c)* shall not be

included in the work programme unless it has first been approved by the Minister under *subsection (3)*.

(2) The Minister shall not so approve the annual programme of expenditure unless the Minister has first -

- (a) considered the views of the prescribed accountancy bodies; and
- (b) obtained the consent of the Minister of Finance,

and this subsection extends to an approval by the Minister of the programme with amendments.

(3) The Minister may approve the annual programme of expenditure with or without amendment by the Minister.

(4) If the Minister approves the annual programme of expenditure with amendments, the Supervisory Authority -

- (a) may revise any other part of the work programme; and
- (b) if it does so, shall submit to the Minister the revised work programme, including the annual programme of expenditure as amended by the Minister.

Specification in annual programme of expenditure of amounts for reserve fund

901. In addition to capital and other expenditures, the annual programme of expenditure shall specify the portion of the revenue received or to be received under *sections 903(2)* and *905* for the financial year in question that has been set aside as mentioned in *section 907(3)*.

Review of work programme.

902. (1) The Supervisory Authority may -

- (a) if it considers it necessary to do so, undertake an interim review of a work programme; and
- (b) may submit to the Minister, within the period covered by the work programme, an amended or supplementary work programme, including an amended or supplementary annual programme of expenditure.

(2) An amended or supplementary annual programme of expenditure shall not be included in an amended or supplementary work programme unless it has first been approved in accordance with *subsection (3) of section 900* and *subsection (2) of that section* applies to such an approval as it applies to the approval of an original annual programme of expenditure.

(3) If the Minister so approves with amendments the Supervisory Authority's amended or supplementary annual programme of expenditure, the powers under *section 900(4)* are equally available to the Supervisory Authority with respect to its amended or supplementary work programme under this section as they are available with respect to an original work programme and, accordingly, *section 900(4)* applies, with any necessary modifications, to that amended or supplementary work programme.

Funding.

903. (1) For the purposes specified in *section 904(1)*, the Supervisory Authority in each financial year -

- (a) shall be paid a grant in accordance with *subsection (2)*; and
- (b) may impose levies under *sections 905 and 906*.

(2) In each financial year, a grant not exceeding 40 per cent of the annual programme of expenditure approved for that year under *section 900* shall, subject to any conditions that the Minister thinks proper, be paid to the Supervisory Authority out of money provided by the Oireachtas.

Application of money received by Supervisory Authority.

904. (1) The Supervisory Authority shall not use the money received by it under this Chapter except for the purpose of meeting expenses properly incurred by it in performing its functions under this Chapter.

(2) The Supervisory Authority may use money set aside for or paid into the reserve fund in accordance with *section 907* only for the purpose of meeting expenses incurred by it in performing its functions under *sections 921 and 925* and may not use any other money received by it for that purpose.

Supervisory Authority may levy prescribed accountancy bodies.

905. (1) For the purpose specified in *section 904(1)* and in accordance with this section, the Supervisory Authority may impose one or more levies in each financial year of the Supervisory Authority on each prescribed accountancy body.

(2) The total amount levied in any financial year of the Supervisory Authority on all prescribed accountancy bodies under this section shall not exceed 60 per cent of the annual programme of expenditure approved for that year under *section 900*.

(3) The Supervisory Authority shall not impose a levy on a prescribed accountancy body under this section unless the Minister has -

- (a) first approved-
 - (i) the total amount to be levied on all prescribed accountancy bodies in the relevant financial year; and
 - (ii) the criteria for apportioning the levy among the classes of prescribed accountancy bodies; and
- (b) consented to the levy.

(4) The Supervisory Authority shall -

- (a) establish criteria for apportioning a levy among the classes of prescribed accountancy bodies;
- (b) submit the criteria to the Minister for approval before imposing the levy; and
- (c) specify the date on which the levy is due to be paid by those bodies.

(5) As a consequence of the apportionment of a levy according to the criteria established by the Supervisory Authority, different classes of prescribed accountancy bodies may be required to pay different amounts of the levy.

(6) Before consenting to a levy under this section, the Minister -

- (a) shall consult with the prescribed accountancy bodies; and

- (b) may consult with any other persons who, in the opinion of the Minister, are interested in the matter.

(7) The Supervisory Authority may recover a levy imposed under this section as a simple contract debt in any court of competent jurisdiction from the prescribed accountancy body from which the levy is due.

Supervisory Authority may levy certain companies and other undertakings.

906. (1) For the purpose specified in *section 904(1)* and in accordance with this section, the Supervisory Authority may impose in each financial year of the Supervisory Authority one or more levies on the following:

- (a) each public limited company (whether listed or unlisted);
- (b) each private company limited by shares that, in both the most recent financial year and the immediately preceding financial year of the company, meets the following criteria:
 - (i) its balance sheet total for the year exceeds -
 - (I) if no amount is prescribed under *section 933(1)(d)*, €25,000,000; or
 - (II) if an amount is prescribed under *section 933(1)(d)*, the prescribed amount;
 - (ii) the amount of its turnover for the year exceeds -
 - (I) if no amount is prescribed under *section 933(1)(d)*, €50,000,000; or
 - (II) if an amount is prescribed under *section 933(1)(d)*, the

prescribed amount;

- (c) each private company limited by shares that is a holding undertaking, if the holding undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the holding undertaking, meet the criteria in *paragraph (b)*;
- (d) each undertaking referred to in Regulation 6 of the 1993 Accounts Regulations that, in both the most recent financial year and the immediately preceding financial year of the undertaking, meets the criteria in *paragraph (b)*;
- (e) each undertaking referred to in Regulation 6 of the 1993 Accounts Regulations that is a holding undertaking, if the holding undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the holding undertaking, meet the criteria in *paragraph (b)*.

(2) *Subsection (1)* shall not apply in respect of a company or an undertaking of a class exempted under *section 933(1)(i)* from this section.

(3) The total amount levied in any financial year of the Supervisory Authority on all companies and undertakings shall not exceed the total amount paid into the reserve fund for that year under *section 907(4)(a)*.

(4) The Supervisory Authority shall not impose a levy on a company or undertaking under this section unless the Minister has -

- (a) first approved -
 - (i) the total amount to be levied on all companies and undertakings in the

relevant financial year; and

(ii) the criteria for apportioning the levy among the classes of companies and undertakings; and

(b) consented to the levy.

(5) In determining whether to approve the total amount referred to in *subsection (4)(a)(i)*, the Minister may -

(a) have regard to the Supervisory Authority's work programme; and

(b) give due consideration to the use to which its reserve fund was put in the previous financial year.

(6) The Supervisory Authority shall -

(a) establish criteria for apportioning a levy among the classes of companies and undertakings liable to pay the levy under *subsection (1)*;

(b) submit the criteria to the Minister for approval before imposing the levy; and

(c) specify the date on which the levy is due to be paid by those companies and undertakings.

(7) As a consequence of the apportionment of a levy according to the criteria established by the Supervisory Authority, different classes of companies and undertakings may be required to pay different amounts of the levy.

(8) Before imposing a levy under this section, the Supervisory Authority may consult with any other persons who, in its opinion, are interested in the matter.

(9) The Supervisory Authority may recover a levy imposed under this section as a simple contract debt in any court of competent jurisdiction from the company or undertaking from which the levy is due.

(10) Where a holding undertaking and one or more of its subsidiary undertakings would each otherwise be liable to pay a levy imposed under this section, the holding undertaking only shall be liable to pay the levy.

(11) *Subsection (10)* applies whether the holding undertaking is a public limited company, a private company limited by shares or an undertaking referred to in Regulation 6 of the 1993 Accounts Regulations.

Reserve fund.

907. (1) The reserve fund established under section 15(1) of the Act of 2003 shall continue in being and continue to be maintained by the Supervisory Authority but subject to any limit specified by the Minister under that provision or that limit as it may stand amended under *subsection (2)*.

(2) The Minister may amend the limit referred to in *subsection (1)*.

(3) In each financial year of the Supervisory Authority, the Supervisory Authority shall set aside for the reserve fund such portion of the revenue received or to be received under *sections 903(2) and 905* for that financial year as it considers to be appropriate.

(4) In each financial year of the Supervisory Authority, the Supervisory Authority shall pay into the reserve fund -

- (a) the amount set aside under *subsection (3)* or, if that amount is amended through an amendment under *section 900(3)* to the annual programme of expenditure, the amended amount;
- (b) the proceeds of any levy imposed under *section 906*;
- (c) any amounts paid to the Supervisory Authority under *section 921(5)* or *(6)* or *922(7)*; and
- (d) any costs recovered under *section 925*.

(5) The Supervisory Authority shall promptly inform the Minister if, in any financial year, the total amount in the reserve fund is likely to exceed any limit standing specified in relation to the fund by the Minister.

Borrowing.

908. For the purpose of providing for activities specified in its work programme, the Supervisory Authority may, from time to time, borrow money subject to -

- (a) the consent of the Minister and the Minister for Finance; and
- (b) such conditions as they may specify.

Excess revenue.

909. (1) The Supervisory Authority shall apply any excess of its revenue over its expenditure in any financial year to meet its programme of expenditure approved for the subsequent year

under *section 900*, and the amounts payable under *sections 903 (2)* and *905* for the subsequent year shall be appropriately reduced.

(2) Money in, or set aside for, the reserve fund shall not be considered revenue for the purpose of this section.

Employees (including provision of a transitional nature).

910. (1) Subject to *subsection (2)* and to the limits of staffing numbers specified in its work programme under *section 899*, the Supervisory Authority may employ such persons as it thinks necessary.

(2) Subject to the prior approval of the Minister given with the consent of the Minister of Finance, the Supervisory Authority shall determine the numbers and grades of its employees and the terms and conditions of their employment.

(3) The Supervisory Authority may from time to time engage the services of professional and other advisers.

(4) A person who was in the employment of the Irish Auditing and Accounting Supervisory Authority immediately before the commencement of this section shall continue in the employment of the Supervisory Authority and such employment shall (subject to any determination for the time being that may be made under *subsection (2)* of a like kind as could, from time to time, have been made under *section 17(2)* of the Act of 2003) be on the same terms and conditions as applied to the person immediately before such commencement.

Director’s obligations when material interest in arrangement, contract or agreement with Supervisory Authority arises.

911. (1) A director of the Supervisory Authority who, otherwise than in his or her capacity as such director, has a material interest in a specified matter shall neither influence nor seek to influence any decision to be made by the Authority in relation to that matter.

(2) A director of the Supervisory Authority present at a meeting where a specified matter arises in which he or she has a material interest otherwise than in his or her capacity as such director shall -

- (a) at the meeting, disclose the fact of the interest and its nature to the board or the committee, as the case may be;
- (b) absent himself or herself from the meeting or the part of the meeting during which the matter is discussed;
- (c) take no part in any deliberations of the board or committee relating to the matter; and
- (d) refrain from voting on any decision relating to the matter.

(3) Where a director discloses a material interest under this section -

- (a) the chairperson of the meeting shall ensure that the disclosure is recorded in the minutes of the meeting; and
- (b) for as long as the matter is being dealt with by the meeting, the director shall not be counted in the quorum for the meeting.

(4) Where at a meeting a question arises as to whether or not a course of conduct, if pursued by a director, would be a contravention of *subsection (2)* -

- (a) subject to *subsection (5)*, the chairperson of the meeting shall determine the question;
- (b) the chairperson's determination shall be final; and
- (c) the chairperson shall ensure that the particulars of the determination are recorded in the minutes of the meeting.

(5) For the purposes of *subsection (4)*, if the chairperson is the director in respect of whom the question arises, the other directors present at the moment shall choose one of themselves to be the chairperson of the meeting.

(6) *Section 228* (as applied by *section – [section corresponding to Part B4, Head 2(1)]*) does not apply to a director of the Supervisory Authority.

(7) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

(8) In this section -

“meeting” means a meeting of the board of the Supervisory Authority or of a committee of its directors;

“specified matter” means -

- (a) an arrangement or a proposed arrangement to which the Supervisory Authority is a party; or
- (b) a contract or other agreement, or proposed contract or other agreement,

with the Supervisory Authority.

Effect of breach of director’s obligations in relation to material interest.

912. (1) If satisfied that a director of the Supervisory Authority has contravened *section 911(1) or (2)*, the Minister may -

- (a) in the case of a director appointed by the Minister and if the Minister thinks fit, remove that director from office;
- (b) in the case of a director who is the chief executive officer, recommend to the board that board remove him or her.

(2) A director who is removed by the Minister under this section or on the recommendation of the Minister made under this section shall be disqualified for appointment as a director or chief executive of the Supervisory Authority.

Employee’s duty of disclosure.

913. (1) An employee of the Supervisory Authority who otherwise than in his or her capacity as such employee has a material interest in a specified matter as defined in *section 911(8)* shall -

- (a) disclose to the Supervisory Authority the fact of the interest and its nature;
- (b) take no part in -
 - (i) the negotiation of the arrangement, contract or other agreement in question; or
 - (ii) any deliberation by the Supervisory Authority or its employees relating

to the matter;

- (c) refrain from making any recommendation relating to the matter; and
- (d) neither influence nor seek to influence a decision to be made in the matter.

(2) *Subsection (1)* does not apply to contracts or proposed contracts of employment between the Supervisory Authority and its employees.

(3) Where a person contravenes this section, the Supervisory Authority may -

- (a) terminate that person's contract of employment; or
- (b) may amend the terms and conditions of that person's employment as it considers appropriate.

Superannuation scheme.

914. (1) The Supervisory Authority may, if it considers it appropriate to do so, prepare and submit to the Minister a scheme or schemes for granting superannuation benefits to or in respect of one or both of the following:

- (a) the chief executive officer;
- (b) any employee of the Supervisory Authority.

(2) Each superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of which superannuation benefits are payable under the scheme, and different terms and conditions may be fixed in respect of different classes of persons.

(3) A superannuation scheme submitted to the Minister under this section shall, if approved

by the Minister with the consent of the Minister for Finance, be carried out in accordance with its terms.

(4) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(5) The Supervisory Authority may not grant, or enter into any arrangement for the provision of, any superannuation benefit to or in respect of a person referred to in *subsection (1)* except

-

- (a) in accordance with a superannuation scheme approved under this section; or
- (b) with the approval of the Minister given with the consent of the Minister for Finance.

(6) In the case of a dispute as to the claim of any person to, or the amount of, any superannuation benefit payable under a superannuation scheme approved under this section -

- (a) the dispute shall be submitted to the Minister;
- (b) the Minister shall refer the dispute to the Minister of Finance for his or her determination of it; and
- (c) the decision of the Minister of Finance shall be final.

(7) Every superannuation scheme approved by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Accounts and audit.

915. (1) Without prejudice to the requirements of *Part 6* (as applied by *section – [section corresponding to Part B4, Head 2(1)]*) in relation to financial statements, the Supervisory Authority shall keep records of, and prepare all proper and usual accounts of -

- (a) all income received by it, including records of the sources of that income;
- (b) all expenditure incurred by it; and
- (c) its assets and liabilities.

(2) Not later than 3 months after the end of the financial year to which the accounts relate, the Supervisory Authority shall submit the accounts prepared under this section to the Comptroller and Auditor General for audit.

(3) After the audit, the Comptroller and Auditor General shall present to the Minister the audited accounts together with the Comptroller and Auditor General's report.

(4) The Minister shall ensure that, as soon as practicable after those accounts and that report are presented to the Minister, copies of them are -

- (a) laid before each House of the Oireachtas; and
- (b) supplied to the prescribed accountancy bodies.

(5) The Supervisory Authority shall -

- (a) at the Minister's request, permit any person appointed by the Minister to examine its accounts in respect of any financial year or other period;

- (b) facilitate the examination of the accounts by the person appointed; and
- (c) pay any fee that is set by the Minister for the examination.

Annual report.

916. (1) As soon as practicable but in any event not later than 4 months after the end of each financial year, the Supervisory Authority shall make a written report to the Minister of its activities during that year.

(2) The annual report shall be prepared in such manner and form as the Minister may direct.

(3) The Minister shall ensure that a copy of the annual report is laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the report relates.

Accountability to Dáil Éireann.

917. (1) Whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the chief executive officer and the chairperson of the board of the Supervisory Authority shall give evidence to that Committee in respect of the following:

- (a) the regularity and propriety of the transactions recorded or to be recorded in any account that -
 - (i) the Supervisory Authority is required by law to prepare; and

- (ii) is subject to audit by the Comptroller and Auditor General;
- (b) the economy and efficiency of the Supervisory Authority in using its resources;
- (c) systems, procedures and practices used by the Supervisory Authority for evaluating the effectiveness of its operations;
- (d) any matter affecting the Supervisory Authority that is referred to in -
 - (i) a special report under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993; or
 - (ii) any other report of the Comptroller and Auditor General that is laid before the Dail Eireann, in so far as that report relates to a matter specified in any of *paragraphs (a) to (c)*.

(2) Whenever required by any other committee appointed by either House of the Oireachtas or appointed jointly by both Houses, the chief executive officer and the chairperson of the board of the Supervisory Authority shall account to the committee for the performance of the functions of the Supervisory Authority.

(3) The Supervisory Authority shall have regard to any recommendations relating to its functions that are made by a committee in response to an account given under *subsection (2)*.

(4) In giving evidence under *subsection (1)* or an account under *subsection (2)*, the chief executive officer and the chairperson of the board of the Supervisory Authority shall not question or express an opinion on the merits of -

- (a) any policy of the Government or a Minister of the Government; or
- (b) the objectives of such a policy.

Recognition of body of accountants.

918. (1) The Supervisory Authority may grant recognition to a body of accountants for the purposes of the 2010 Audits Regulations or the public auditors section but may only grant such recognition if satisfied—

(a) in the case of a grant of recognition—

(i) to a body of accountants for the purposes of the 2010 Audits Regulations, that the standards relating to training, qualifications and repute required by that body for the approval of a person as a statutory auditor are not less than those specified in Articles 4, 6 to 8 and 10 of Directive No. 2006/43/EC of the European Parliament and of the Council of 17 May 2006;

(ii) to a body of accountants for the purposes of the public auditors section, that the standards relating to training, qualifications and repute required by that body for the awarding of a practising certificate to a person are not less than those that were specified in Articles 3 to 6, 8 and 19 of Council Directive No. 84/253/EEC of 10 April 1984 before the repeal thereof by Directive No. 2006/43/EC of the European Parliament and of the Council of 17 May 2006,

and

(b) in either of those 2 cases, as to the standards that body applies to its members in the area of ethics, codes of conduct and practice, independence, professional integrity, auditing and accounting standards and investigation and disciplinary procedures.

(2) Each of the following—

- (a) the Association of Chartered Certified Accountants;
- (b) the Institute of Chartered Accountants in Ireland;
- (c) the Institute of Chartered Accountants in England and Wales;
- (d) the Institute of Chartered Accountants of Scotland;
- (e) the Institute of Certified Public Accountants in Ireland;
- (f) the Institute of Incorporated Public Accountants,

shall be deemed to have been granted recognition under this section by the Supervisory Authority for the purposes of the 2010 Audits Regulations and the public auditors section.

(3) In *subsection (1)(a)(ii)* “practising certificate” means a certificate awarded to a person by a body of accountants entitling the person under the public auditors section to practise as a public auditor.

Provisions in relation to recognition by Supervisory Authority under *section 918*.

919. (1) The Supervisory Authority may –

- (a) at the time of the grant of a recognition under *section 918*; or
- (b) at any time during the currency of a recognition so granted,

by notice in writing given to the body of accountants concerned, attach to the recognition

such terms and conditions as it thinks necessary or expedient and specified in the notice.

(2) The Supervisory Authority may, at any time during the currency of a recognition granted under *section 918*, by notice in writing given to the body of accountants concerned, amend the recognition's terms or conditions or insert into it, or delete from it, other terms or conditions.

(3) The Supervisory Authority may, at any time during its currency, by notice in writing given to the body of accountants concerned, revoke, or suspend for a specified period, a recognition granted under *section 918*.

(4) Where a disciplinary committee of a body of accountants recognised under *section 918* has reasonable grounds for believing that a category 1 or 2 offence may have been committed by a person while the person was a member of the body, the body shall, as soon as possible, provide a report to the Director giving details of the alleged offence and shall furnish the Director with such further information in relation to the matter as the Director may require.

(5) Where a body referred to in *subsection (4)* fails to comply with that subsection or a requirement of the Director under that subsection, it, and any officer of the body to whom the failure is attributable, shall be guilty of a category 3 offence.

Consultation by Supervisory Authority regarding standards and qualifications.

920. (1) Before granting, renewing, withdrawing, revoking, suspending or refusing a recognition of a body of accountants under *section 918* for the purposes of—

(a) the 2010 Audits Regulations; or

(b) the public auditors section,

the Supervisory Authority may consult with any body of persons or other person as to the conditions or standards required by the body of accountants concerned in connection with membership of that body or, as the case may be, the approval of persons as statutory auditors or the awarding to persons of practising certificates (within the meaning of *section 918(1)(a)(ii)*).

(2) Without prejudice to any obligations in that behalf in connection with the performance of the foregoing functions as they relate to the 2010 Audits Regulations, the Supervisory Authority may also consult with any body of persons or other person before forming any opinion or making any declaration in relation to the qualifications held by any person or class of persons as respects qualification for appointment under the public auditors section as a public auditor.

Intervention in disciplinary process of prescribed accountancy bodies.

921. (1) In this section, “approved investigation and disciplinary procedures” means —

- (a) in relation to a prescribed accountancy body that is a recognised accountancy body, the investigation and disciplinary procedures approved under —
- (i) *section 894(2)(c)*;
 - (ii) section 9(2)(c) of the Act of 2003; or
 - (iii) the Act of 1990, whether before or after the amendments of that Act that were made by section 32 of the Act of 2003; and

(b) in relation to any other prescribed accountancy body, the investigation and disciplinary procedures approved under –

(i) *section 894(2)(c)*; or

(ii) *section 9(2)(c)* of the Act of 2003.

(2) Following a complaint or on its own initiative, the Supervisory Authority may, for the purpose of determining whether a prescribed accountancy body has complied with the approved investigation and disciplinary procedures, enquire into —

(a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member;

(b) the conduct of an investigation by that body into a possible breach of its standards by a member; or

(c) any other decision of that body relating to a possible breach of its standards by a member, unless the matter is or has been the subject of an investigation under *section 922* relating to that member.

(3) For the purposes of an enquiry under this section, the Supervisory Authority may —

(a) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body; and

(b) require the prescribed accountancy body to explain why it reached a decision referred to in *subsection (2)(a)* or *(c)* or to explain how it conducted its investigation.

(4) If at any time before completing an enquiry under this section into a matter relating to a member of a prescribed accountancy body, the Supervisory Authority forms the opinion that

it is appropriate or in the public interest that the matter be investigated under *section 922*, the Authority may apply to the court for permission to investigate the matter under that section.

(5) If not satisfied, after completing the enquiry, that the prescribed accountancy body complied with the approved investigation and disciplinary procedures, the Supervisory Authority may advise or admonish the prescribed accountancy body or may censure it by doing one or more of the following—

- (a) annulling all or part of a decision of that body relating to the matter that was the subject of the enquiry;
- (b) directing that body to conduct an investigation or a fresh investigation into the matter;
- (c) requiring that body to pay to the Supervisory Authority an amount not exceeding the greater of the following:
 - (i) €125,000;
 - (ii) the amount prescribed under *section 933(1)(e)*,

and *section 931* has effect as regards requiring, in certain circumstances, an application to be made to the court for confirmation of the foregoing.

(6) Where, as mentioned in *subsection (5)*, the Supervisory Authority is not satisfied that the prescribed accountancy body has complied with the approved investigation and disciplinary procedures, the body is, in addition to any liability or obligation to pay an amount or do a thing by virtue of that subsection, liable to pay the amount specified by the Supervisory Authority towards its costs in conducting the enquiry under this section.

(7) Where the Supervisory Authority applies under this section to the court for permission to

investigate, under *section 922*, any matter relating to a member of a prescribed accountancy body or decides to direct a prescribed accountancy body to conduct an investigation or a fresh investigation under this section into any matter, the following rules apply —

- (a) in the case of an application to the court for permission to investigate a matter, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that permission has been granted under *section 931(3)*;
- (b) in the case of a direction to conduct an investigation, any decision of that body relating to the matter is suspended as soon as the body is notified by the Supervisory Authority of the direction;
- (c) in the case of a direction to conduct a fresh investigation, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that the direction has been confirmed under *section 931(6)*.

(8) The Supervisory Authority may publish each decision made under *subsection (5)* or each decision made specifying an amount under *subsection (6)* and the reasons for the decision after giving the prescribed accountancy body and the member concerned not less than 3 months notice in writing of its intention to do so.

(9) The prescribed accountancy body or the member concerned may appeal to the court against a decision made by the Supervisory Authority under *subsection (5)* or a decision made by it specifying an amount under *subsection (6)*.

(10) An appeal under *subsection (9)* shall be brought before the expiry of the notice given

under *subsection (8)* to the prescribed accountancy body and the member concerned.

(11) If not satisfied that a prescribed accountancy body has, when undertaking an investigation or a fresh investigation into the matter under *subsection (5)(b)*, complied with the approved investigation and disciplinary procedures, the Supervisory Authority may appeal to the court against any decision of the prescribed accountancy body relating to the matter.

(12) An appeal under *subsection (11)* shall be brought within 3 months after date on which the Supervisory Authority was notified by the prescribed accountancy body of its decision.

(13) For the purposes of this section –

- (a) any decision made or any investigation conducted by the disciplinary committee of a prescribed accountancy body is considered to have been made or conducted by the prescribed accountancy body;
- (b) “member”, in addition to the meaning given to that expression by *section 889(1)*, includes, in relation to a prescribed accountancy body that is a recognised accountancy body, an individual or firm who or which, though not a member of the recognised accountancy body, is an individual or firm in relation to whom that body may exercise powers under the 2010 Audits Regulations.

Investigation of possible breaches of standards of prescribed accountancy bodies.

922. (1) In this section—

“client” includes an individual, a body corporate, an unincorporated body of persons and a partnership;

“relevant person”, in relation to an investigation of a member of a prescribed accountancy body, means—

- (a) a member of the prescribed accountancy body;
- (b) a client or former client of such member;
- (c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client;
- (d) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body; or
- (e) any person whom the Supervisory Authority reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law.

(2) If, in the Supervisory Authority’s opinion, it is appropriate or in the public interest to undertake an investigation into a possible breach of a prescribed accountancy body’s standards by a member, the Authority may do so —

- (a) following a complaint; or
- (b) on its own initiative,

but no investigation may be undertaken into a matter that is or has been the subject of an enquiry under *section 921* relating to that member except with the permission of the court granted on application under *section 921(4)*.

(3) For the purposes of an investigation under this section, the Supervisory Authority may require a relevant person to do one or more of the following —

- (a) produce to the Supervisory Authority all books or documents relating to the investigation that are in the relevant person's possession or control;
- (b) attend before the Supervisory Authority;
- (c) give the Supervisory Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give.

(4) For the purposes of an investigation under this section, the Supervisory Authority may —

- (a) examine on oath, either by word of mouth or on written interrogatories, a relevant person;
- (b) administer oaths for the purposes of the examination; and
- (c) record, in writing, the answers of a person so examined and require that person to sign them.

(5) The Supervisory Authority may certify the refusal or failure to the court if a relevant person refuses or fails to do one or more of the following —

- (a) produce to the Supervisory Authority any book or document that it is the person's duty under this section to produce;
- (b) attend before the Supervisory Authority when required to do so under this section;
- (c) answer a question put to the person by the Supervisory Authority with respect to the matter under investigation.

(6) On receiving a certificate of refusal or failure concerning a relevant person, the court may enquire into the case and after hearing any evidence that may be adduced, may do one or more of the following —

- (a) direct that the relevant person attend or re-attend before the Supervisory Authority or produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
- (b) direct that the relevant person need not produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
- (c) make any other ancillary or consequential order or give any other direction that the court thinks fit.

(7) If the Supervisory Authority finds that the member committed a breach of the prescribed accountancy body's standards, the Supervisory Authority may impose on the member any sanction to which the member is liable under the approved constitution and bye laws of the prescribed accountancy body (including a monetary sanction) and -

- (a) the fact of a sanction having been imposed on the member by the Supervisory Authority shall be disclosed by the Authority to the public and that disclosure shall include—

- (i) in a case where the member is making an appeal to the court against the decision of the Supervisory Authority, an indication that that is so; and

- (ii) if the Supervisory Authority considers it appropriate, such further particulars with respect to the matter as it thinks fit;

and

(b) *section 931* has effect as regards requiring, in certain circumstances, an application to be made to the court for confirmation of the imposition of the sanction referred to in this subsection.

(8) The manner of a disclosure under *subsection (7)*, and the time at which it is made, shall be such as the Supervisory Authority determines to be appropriate.

(9) The costs incurred by the Supervisory Authority in investigating and determining a matter under this section (other than any costs of or incidental to an enquiry by the court under *subsection (6)*) shall be defrayed by the prescribed accountancy body whose member has been the subject of the investigation; for the purposes of this subsection –

(a) the Supervisory Authority may prescribe by regulations that specified procedures and methods of calculation shall apply in the determination of the amount of costs so defrayed by it and prescribe by regulations requirements otherwise as to the liability of the prescribed accountancy body for, and the manner in which it shall pay, that amount; and

(b) in default of payment of that amount to the Supervisory Authority, the Authority may recover that amount as a simple contract debt in any court of competent jurisdiction.

(10) The member who is the subject of a decision made by the Supervisory Authority under *subsection (7)* may appeal to the court against the decision.

(11) An appeal under *subsection (10)* shall be brought within 3 months after date on which the member concerned was notified by the Supervisory Authority of its decision.

(12) The production of any books or documents under this section by a person who claims a lien on them does not prejudice the lien.

(13) Any information produced or answer given by a member of a prescribed accountancy body in compliance with a requirement under this section may be used in evidence against the member in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

(14) A finding or decision of the Supervisory Authority under this section is not a bar to any civil or criminal proceedings against the member who is the subject of the finding or decision.

Supplemental provisions in relation to *section 922* (including as concerns its relationship to provisions of 2010 Audits Regulations).

923. (1) For the avoidance of doubt, the following matters may, without prejudice to the generality of the provisions of *section 922*, be the subject of an investigation by the Supervisory Authority under that section, namely matters —

- (a) in relation to which a competent authority (within the meaning of the 2010 Audits Regulations) has decided not to withdraw a person's approval under those Regulations as a statutory auditor or audit firm; or
- (b) which either—
 - (i) have not been considered by such a competent authority as grounds for the withdrawal of a person's approval under those

Regulations as a statutory auditor or audit firm; or

- (ii) having been considered by it as such grounds, are not considered by it to disclose a *prima facie* case for proceeding further.

(2) Where —

- (a) those matters are the subject of such an investigation by the Supervisory Authority; and

(b) a breach of standards is found by the Supervisory Authority, *section 922 (7)* shall be read as requiring or enabling (depending on whether the breach of standards found falls within Part 4 or Chapter 3 of Part 8 of the 2010 Audits Regulations) the Supervisory Authority to withdraw the approval under those Regulations of the person concerned as a statutory auditor or audit firm.

(3) Where such an approval is withdrawn by it, the following provisions of the 2010 Audits Regulations shall, with any necessary modifications, apply (and not *subsections (10) and (11) of section 922*) to that withdrawal, namely Regulation 33(11) to (14) (or, as the case may be, Regulation 34(11) to (14)) and Regulation 35.

(4) *Subsection (2)* does not prejudice the imposition, in the circumstances concerned, by the Supervisory Authority of another sanction referred to in *section 922(7)* in addition to a withdrawal of approval (where withdrawal of the approval is mandatory under the 2010 Audits Regulations) or in lieu of a withdrawal of approval (where such withdrawal is not so mandatory).

(5) For the purposes of *section 922* “member”, in addition to the meaning given to that expression by *section 889(1)*, includes, in relation to a prescribed accountancy body that is a recognised accountancy body, an individual or firm who or which, though not a member of the recognised accountancy body, is an individual or firm in relation to whom that body may exercise powers under the 2010 Audits Regulations.

Review of members of recognised accountancy bodies.

924. (1) The Supervisory Authority may, if in its opinion it is appropriate to do so, undertake a review of a member of a recognised accountancy body to determine whether that body has been or is regulating its members in the manner approved under –

- (a) *section 894(2)(b)*;
- (b) *section 9(2)(b)* of the Act of 2003; or
- (c) the Act of 1990, whether before or after the amendments of that Act that were made by *section 32* of the Act of 2003.

(2) For the purposes of a review under this section —

- (a) the Supervisory Authority may inspect and make copies of all relevant documents in the possession or control of the recognised accountancy body whose practices are under review;
- (b) the member of the recognised accountancy body shall co operate with the Supervisory Authority as if the recognised accountancy body were undertaking the review; and

(c) if the member fails to co-operate in accordance with *paragraph (b)*, *section 922(3) to (8)* apply, with any necessary modifications, in relation to the member as if the review were an investigation under *section 922*.

Review of whether accounts comply with this Act.

925. (1) In this section—

“annual accounts” means, in relation to a relevant undertaking –

- (a) in the case of a relevant undertaking that is a company registered under this Act or an existing company, the statutory financial statements of the undertaking for a financial year of the undertaking;
- (b) in the case of any other type of relevant undertaking, the profit and loss account, balance sheet, and any other document analogous to that prepared as part of statutory financial statements of a company referred to in *paragraph (a)*, prepared by the relevant undertaking for a financial year of it;

“relevant undertaking” means—

- (a) a public limited company (whether unlisted or listed);
- (b) a subsidiary undertaking of a public limited company referred to in *paragraph (a)*;
- (c) a private company limited by shares that, in both the relevant financial year and the immediately preceding financial year of the company, meets the following criteria:
 - (i) its balance sheet total for the year exceeds -

- (I) if no amount is prescribed under *section 933(1)(g)* for the purpose of this provision, €25,000,000, or
 - (II) if an amount is prescribed under *section 933(1)(g)* for that purpose, the prescribed amount;
- (ii) the amount of its turnover for the year exceeds,
- (I) if no amount is prescribed under *section 933(1)(g)* for the purpose of this provision, €50,000,000, or
 - (II) if an amount is prescribed under *section 933(1)(g)* for that purpose, the prescribed amount;
- (d) a private company limited by shares that is a holding undertaking, if the holding undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in *paragraph (c)*;
- (e) each subsidiary undertaking of a holding undertaking that comes within *paragraph (d)*;
- (f) an undertaking referred to in Regulation 6 of the 1993 Accounts Regulations that, in both the relevant financial year and the immediately preceding financial year of the undertaking, meets the criteria in *paragraph (c)*;
- (g) an undertaking referred to in Regulation 6 of the 1993 Accounts Regulations that is a holding undertaking, if the holding undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in *paragraph (c)*; or

(h) each subsidiary undertaking of a holding undertaking that comes within *paragraph (g)*,

but does not include a company or an undertaking of a class exempted under *section 933(1)(i)* from this section.

(2) A reference in this section to the directors of a relevant undertaking is to be read, in the case of an undertaking that does not have a board of directors, as a reference to the corresponding persons appropriate to that undertaking.

(3) Subject to *section 926(2)*, the Supervisory Authority may give notice to the directors of a relevant undertaking concerning its annual accounts where —

- (a) a copy of the annual accounts has been sent out under *section 334* or laid before the undertaking at its annual general meeting or delivered to the Registrar; and
- (b) it appears to the Supervisory Authority that there is, or may be, a question whether the annual accounts comply with this Act and, where applicable, Article 4 of the IAS Regulation.

(4) The notice to the directors of the relevant undertaking shall specify —

- (a) the matters in respect of which it appears to the Supervisory Authority that the question of compliance with this Act and, where applicable, Article 4 of the IAS Regulation arises or may arise; and
- (b) a period of not less than 30 days within which those directors are required to give the Supervisory Authority an explanation of the annual accounts or to prepare revised annual accounts that comply with this Act and, where

applicable, Article 4 of the IAS Regulation.

(5) If before the end of the specified period, or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking prepare revised annual accounts, the Supervisory Authority may, taking account of the circumstances of the case and the degree of co-operation by the directors with the Supervisory Authority, require that undertaking to pay some or all of the costs the Supervisory Authority incurred under this section in relation to that undertaking.

(6) If at the end of the specified period or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking have, in the Supervisory Authority's opinion, neither given a satisfactory explanation of the annual accounts nor revised them to comply with this Act and, where applicable, Article 4 of the IAS Regulation, the Supervisory Authority may apply to the court for a declaration of non-compliance and an order under *subsection (8)*.

(7) If an application is made to the court under *subsection (6)*, the Supervisory Authority shall give to the Registrar for registration —

- (a) notice of the application; and
- (b) a general statement of the matters at issue in the proceedings.

(8) If satisfied, after hearing the application, that the relevant undertaking's annual accounts referred to in *subsection (3)* do not comply with this Act and, where applicable, Article 4 of the IAS Regulation, the court may make a declaration to that effect and may, by order, do one or more of the following —

- (a) require the directors to revise the annual accounts so that they comply with this Act and, where applicable, Article 4 of the IAS Regulation;
- (b) give directions respecting one or more of the following:
 - (i) the auditing of the revised annual accounts;
 - (ii) the revision of any directors' report;
 - (iii) the steps to be taken by the directors to bring the order of the court to the notice of persons likely to rely on the annual accounts that were the subject of the declaration;
 - (iv) such other matters as the court thinks fit;
- (c) require the directors of the relevant undertaking to pay -
 - (i) the costs incurred by the Supervisory Authority under *subsections (3) and (4)* in relation to that undertaking, and
 - (ii) any reasonable expenses incurred by the relevant undertaking in connection with or in consequence of the reparation of revised annual accounts.

(9) For the purpose of *subsection (8)(c)*, every director of the relevant undertaking at the time the annual accounts were approved is considered to have been a party to their approval unless the director shows that he or she took all reasonable steps to prevent their being approved.

(10) In making an order under *subsection (8)(c)*, the court —

- (a) shall have regard to whether any or all of the directors who approved the annual accounts that were the subject of the declaration knew, or ought to have

known, that they did not comply with this Act and, where applicable, Article 4 of the IAS Regulation, and

- (b) may exempt one or more directors from the order or may order the payment of different amounts by different directors.

Supplemental provisions in relation to *section 925*.

926. (1) On the conclusion of the proceedings under *section 925*, the Supervisory Authority shall give to the Registrar for registration —

- (a) a copy of the order of the court made under that section; or
- (b) notice that the application has not been successful or has been withdrawn.

(2) The Supervisory Authority shall consult with the Central Bank before making any decisions under *section 925* with respect to a company regulated by the Central Bank, including a decision to give notice under *subsection (3)* of that section.

(3) *Section 925* and this section apply equally to annual accounts that have been revised under the relevant provisions of *section 925*, in which case references in those sections to revised annual accounts shall be read as references to further revised annual accounts.

(4) For the purpose of applying *section 925* and this section to a partnership that is referred to in Regulation 6 of the 1993 Accounts Regulations and that is a relevant undertaking —

- (a) the partnership is to be treated as though it were a company formed and registered under this Act; and
- (b) those sections apply with any modifications necessary for that purpose.

(5) For the purpose of applying *section 925* and this section to a relevant undertaking that is not a company registered under this Act or an existing company –

- (a) references to whether the annual accounts of the undertaking comply with this Act shall be read as references to whether those accounts comply with this Act as it is applied by the 1993 Accounts Regulations;
- (b) the reference in *section 925(3)(b)* to annual accounts of the undertaking being laid before an annual general meeting of the undertaking shall, if there is no obligation on the undertaking to lay such accounts before such a meeting, or to hold such a meeting, be read as a reference to their being prepared for the information of the members constituting the undertaking.

(6) Where revised annual accounts are prepared under this section, then, subject to a direction given under *section 925(8)(b)*, any provision of this Act respecting the preparation, auditing, circulation and disclosure of annual accounts, applies with the necessary modifications to the revised annual accounts.

Delegation of Supervisory Authority's functions.

927. (1) The Supervisory Authority may delegate some or all of the functions under *sections 921* to *926* to a committee established for that purpose and consisting of persons from one or more of the following categories of persons:

- (a) persons who are, at the time the committee is established, directors of the Authority;
- (b) other persons that the Authority considers appropriate.

(2) Where functions under a provision referred to in *subsection (1)* are delegated to a committee, any references in that provision to the Supervisory Authority shall be read as references to that committee.

(3) Subject to the regulations made under *section 928(4)*, a committee may regulate its own procedure.

(4) The Supervisory Authority may, if it reasonably considers it appropriate to do so, perform any of its other functions through or by any of its officers or employees or any other person duly authorised by it in that behalf, including the determination of whether a matter should be referred to a committee established for a purpose referred to in *subsection (1)*.

(5) A delegation under this section is revocable at will.

(6) For the avoidance of doubt, a committee that was established under section 27(1) of the Act of 2003 prior to the commencement of section 4 of the Companies (Miscellaneous Provisions) Act 2009 shall be deemed to have been properly constituted, and shall be deemed to have and to have had all the powers necessary to perform its functions notwithstanding that any of its members was a director when he or she was appointed to the committee but ceased to be such a director before the completion of the enquiry, investigation or review for which it was established.

Hearings, privileges and procedural rules.

928. (1) The Supervisory Authority may for the purposes of performing its functions under *section 921, 922 or 923* conduct an oral hearing in accordance with regulations made under *subsection (4)*.

(2) A witness before the Supervisory Authority is entitled to the same immunities and privileges as a witness before the court.

(3) Nothing in *section 921, 922, 923 or 924* 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) Subject to *subsection (5)*, the Supervisory Authority shall make regulations respecting the procedures to be followed in conducting enquiries under *section 921*, investigations under *sections 922 and 923* and reviews under *section 924*.

(5) No obligation to make such regulations arises under *subsection (4)* with respect to a particular provision referred to in that subsection for so long as regulations made under the Act of 2003 for the purposes of the corresponding provision of that Act (provision for the continuance in force of which regulations is made by *Schedule 6*) remain in force.

Supervisory Authority's seal and instruments.

929. (1) Judicial notice shall be taken of the seal of the Supervisory Authority.

(2) Every document that appears to be an instrument made by the Supervisory Authority and to be sealed with its seal (purporting to be authenticated in accordance with its articles of association) shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

Confidentiality of information.

930. (1) No person shall disclose, except in accordance with law, information that —

- (a) is obtained in performing the functions of the Supervisory Authority; and
- (b) has not otherwise come to the notice of members of the public.

(2) Without limiting *subsection (1)*, the persons to whom that subsection applies include the following —

- (a) a member or director or former member or director of the Supervisory Authority;
- (b) an employee or former employee of the Supervisory Authority;
- (c) a professional or other adviser to the Supervisory Authority, including a former adviser.

(3) *Subsection (1)* does not prohibit the Supervisory Authority from disclosing information referred to in that subsection—

- (a) if the disclosure is, in its opinion, necessary to enable it to state the grounds on which it made a decision under *section 921, 922, 923, 925 or 926*;

- (b) if the information is, in its opinion, connected with the functions of, and if the disclosure is made to, any of the following —
- (i) the Minister;
 - (ii) the Minister for Finance;
 - (iii) the Garda Síochána;
 - (iv) the Director of Public Prosecutions;
 - (v) the Director of Corporate Enforcement;
 - (vi) the Revenue Commissioners;
 - (vii) the Comptroller and Auditor General;
 - (viii) the Central Bank;
 - (ix) the Irish Takeover Panel;
 - (x) the Irish Stock Exchange;
 - (xi) the Pensions Board;
 - (xii) a prescribed accountancy body;
 - (xiii) a member of a recognised accountancy body who is qualified for appointment as a statutory auditor;
 - (xiv) an inspector appointed under this or any other enactment;
 - (xv) any person prescribed under *section 933(2)(h)* for the purposes of this section;
- (c) if the information disclosed is to an individual or entity performing functions in another state which are similar to the functions of the Authority (including, inter alia, functions relating to financial statement review and the oversight of the accountancy and auditing profession) provided that restrictions equivalent to those provided by this section apply in that state in relation to that individual or entity with respect to disclosure of information so given;

(d) if the disclosure of the information consists of information contained in a report that the Authority is required by or under any enactment to prepare and publish;

(e) to any person to whom the disclosure of the information is required in relation to criminal proceedings against -

(i) a relevant undertaking (within the meaning of *section 925*); or

(ii) a director of, or a corresponding person appropriate to (within the meaning of that section), such an undertaking,

for the purposes of complying with the requirements of procedural fairness; or

(f) to a member of a prescribed accountancy body, prescribed accountancy body or other person for the purposes of complying with the requirements of procedural fairness.

(4) A person who contravenes *subsection (1)* shall be guilty of a category 2 offence.

Appeals to and orders of the court, including orders confirming decisions of Supervisory Authority.

931. (1) In an appeal under *section 921(9)* or *(11)* or *section 922(10)*, the court may consider any evidence adduced or argument made, whether or not adduced or made to the Supervisory Authority or other body whose decision is under appeal.

(2) On the hearing of such an appeal, the court may make any order or give any direction it thinks fit, including an order —

- (a) confirming the decision under appeal; or
- (b) modifying or annulling that decision.

(3) On application under *section 921(4)* for an order granting permission for an investigation under *section 922* into a possible breach of a prescribed accountancy body's rules by a member, the court may —

- (a) grant or refuse to grant permission; and
- (b) make any ancillary or consequential order it thinks fit, including, if permission is granted, an order setting aside any decision of the body relating to the member.

(4) A decision of the Supervisory Authority annulling all or part of a decision of a prescribed accountancy body under *section 921(5)(a)*, directing a fresh investigation under *section 921(5)(b)*, specifying an amount of costs under *section 921(6)* or requiring the payment of an amount under *section 921(5)(c)* or *922(7)* does not take effect until that decision is confirmed by the court either—

- (a) on appeal under *section 921(9)* or *922(10)*; or

(b) on application by the Supervisory Authority under *subsection (6)*.

(5) *Subsection (4)(b)* applies also in relation to a decision of the Supervisory Authority requiring payment of costs under *section 925(5)*.

(6) On application by motion on notice by the Supervisory Authority for an order confirming a decision referred to in *subsection (4)* or *(5)*, the court may make an order confirming the decision or may refuse to make such an order.

(7) On application under *section 895(4)* for an order compelling compliance with —

- (a) a rule adopted or guideline issued by the Supervisory Authority;
- (b) a term or condition of recognition; or
- (c) an obligation or obligations referred to in that subsection,

the court may make any order or give any direction it thinks fit.

Liability of Supervisory Authority for acts, omissions, etc.

932. (1) Neither the Supervisory Authority nor any person who is or was —

- (a) a member or director;
- (b) other officer or employee;
- (c) a member of a committee, or
- (d) a professional or other adviser or duly authorised agent,

of the Supervisory Authority shall be liable for damages for anything done, anything purported to be done or anything omitted to be done —

- (i) by the Supervisory Authority or that person (not being such an agent) in

performing their functions under this Act; or

- (ii) in the case of such an agent, by the agent in doing on behalf of the Authority or other foregoing person an act that was done to enable such functions to be performed,

unless the act or omission is shown to have been in bad faith.

(2) The matters in respect of which *subsection (1)* applies include the following —

- (a) any advice given or admonition or censure administered, to a prescribed accountancy body under *section 921(5)*;
- (b) any statement published under *section 921(8)* concerning a prescribed accountancy body;
- (c) any investigation under *section 922* of a possible breach of the standards of a prescribed accountancy body by a member of that body or any sanction or penalty imposed on such a member;
- (d) any certificate of refusal or failure issued by the Supervisory Authority in connection with an investigation under *section 922*;
- (e) any review under *section 924* of a member of a recognised accountancy body;
- (f) any notice given or statement made by the Supervisory Authority under *section 925* respecting whether an undertaking's accounts comply with this Act (within the meaning of that section and, where appropriate, *section 926(5)(a)*)

(3) Subject to any enactment or rule of law the Supervisory Authority may indemnify —

- (a) any person who is or was a member or director, other officer or employee, member of a committee or a professional or other adviser of the Supervisory

Authority in respect of anything done or omitted to be done by that person in good faith in carrying out duties under this Act; and

(b) any person who is or was a duly authorised agent of the Supervisory

Authority in respect of anything done or omitted to be done by that person in good faith in his or her doing an act on behalf of a person referred to in *paragraph (a)* that was done to enable the latter's duties under this Act to be carried out.

(4) The power to indemnify under *subsection (3)* includes the power to indemnify a person referred to in that subsection for any liability to pay damages or costs because of anything done or omitted to be done by that person in carrying out duties under this Act or, in the case of an agent referred to in *paragraph (b)* of that subsection, in doing an act referred to in that paragraph, where the liability —

(a) has been determined in proceedings before a court or tribunal in another state or arises by virtue of an agreement entered into in settlement of such proceedings; and

(b) would not have been determined had *subsections (1) and (2)* been applied in those proceedings or would not have been the subject of such an agreement but for that person's reliance in good faith on a legal opinion or advice that those subsections would not be applied by the court or tribunal in those proceedings.

Minister's power to make regulations for purposes of Chapter, etc.

933. (1) Subject to *section 934* and without prejudice to the application of *section 12(1)* to

this Chapter, the Minister may make regulations that are necessary or advisable for giving effect to this Chapter or the provisions hereafter mentioned of *sections 165, 222 and 272*, including regulations —

- (a) prescribing designated bodies for the purposes of *sections 891 and 896*;
- (b) providing that, effective on a specified date, a body referred to in *section 891(2)* ceases to be a designated body;
- (c) varying, as a consequence of a regulation under *paragraph (a) or (b)*, the numbers specified in *section 896(1),(2) and (4)*, as the Minister considers necessary or expedient;
- (d) prescribing for the purposes of the criteria referred to in *section 906(1)(b)* amounts that are higher or lower than the euro amounts specified in that provision and that apply instead of the euro amounts;
- (e) prescribing the amount of a penalty under *section 921(5)(c)*;
- (f) prescribing for the purpose of *section 921(8)* the manner in which notice is to be given;
- (g) prescribing, for the purposes of the criteria referred to in *paragraph (c)* of the definition of “relevant undertaking” in *section 925(1)*, amounts that are higher or lower than the euro amounts specified in that definition and that apply instead of the euro amounts;
- (h) prescribing for the purposes of *section 930(3)* persons to whom the Supervisory Authority may disclose information;
- (i) exempting from all or any of *sections 222, 906 and 925* –
 - (i) qualifying companies within the meaning of *section 110* of the Taxes Consolidation Act 1997 (as inserted by *section 48* of the Finance Act 2003); and

(ii) classes of other companies and other undertakings, if the extent to which or the manner in which they are or may be regulated under any enactment makes it, in the Minister's opinion, unnecessary or inappropriate to apply those provisions to them;

(j) prescribing for the purposes of the definition of "accounting standards" in *section 272(1)* one or more bodies that issue statements of accounting standards;

(k) prescribing for the purposes of the definition of "large company" in *section 165(1)* or for the purposes of *section 222(7)* amounts that are higher or lower than the euro amounts specified in that definition or in *section 222(7)*, as the case may be, and that apply instead of the euro amounts.

(2) On a body ceasing -

(a) to be a prescribed accountancy body because of the revocation of a regulation made under *section 12(1)*; or

(b) to be a designated body because of a regulation made under *subsection (1)(b)*, any director who was nominated by that body under *section 896* immediately ceases to hold office.

(3) Before preparing, for the purposes of *section 934*, a draft regulation under -

(a) *section 12(1)* prescribing bodies of accountants for the purposes of the definition of "prescribed accountancy body" in *section 889(1)*; or

(b) *subsection (1)(a),(d),(g) or (k)*,

the Minister shall consider any recommendations that the Supervisory Authority may make.

(4) Subject to *subsection (3)*, before making a regulation under this section the Minister may consult with any persons that the Minister considers should be consulted.

(5) Regulations under this section may contain any transitional and other supplementary and incidental provisions that appear to the Minister to be appropriate.

Prior approval by Houses of Oireachtas required for certain regulations.

934. Where it is proposed to make a regulation under -

- (a) *section 12(1)* prescribing bodies of accountants for the purposes of the definition of “prescribed accountancy body” in *section 889(1)*; or
- (b) *section 933(1)(a),(d),(g),(i) or (k)*,

a draft of the proposed regulation shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.

Chapter 3

Director of Corporate Enforcement

Director of Corporate Enforcement.

935. The office of Director of Corporate Enforcement established by section 7 of the Company Law Enforcement Act 2001 shall continue in being.

(2) The person holding the office of Director of Corporate Enforcement immediately before the commencement of this section shall, unless he or she resigns, dies, is removed from, or otherwise vacates, office, continue to hold office after that commencement for the remainder

of the period of office for which he or she was appointed before that commencement; unless those terms or conditions are varied in accordance with this Chapter, that person shall continue to hold such office subject to the same terms and conditions as those subject to which he or she held office immediately before that commencement.

(3) Any appointment of a person to be the Director of Corporate Enforcement falling to be made after the commencement of this section shall be made by the Minister.

(4) The person to be appointed shall be a person duly selected following a competition under the Public Service Management (Recruitment and Appointments) Act 2004 and of which selection the Minister has been advised accordingly.

(5) The Director shall be a corporation sole and, notwithstanding any casual vacancy in the office from time to time, shall have perpetual succession and shall be capable in his or her corporate name of holding and disposing of real or personal property and of suing and being sued.

(6) The Director shall perform the functions conferred on him or her under this or any other Act and shall be assisted in the performance of those functions by the officers of the Director.

(7) Judicial notice shall be taken of the signature of the Director on or affixed to any document and it shall be presumed, unless the contrary is proved, that it has been duly signed or affixed.

Terms and conditions of appointment.

936. (1) Subject to *subsection (3)* and *section 935(2)*, the Director shall hold office for such period not exceeding 5 years beginning on the date of his or her appointment as the Minister, with the consent of the Minister of Finance, determines.

(2) The Minister may, with the consent of the Minister of Finance, continue the appointment of the Director (including an appointment previously continued under this subsection) for such further period, not exceeding 5 years at any one time, as the Minister determines.

(3) The Director shall hold office on such terms and conditions (which shall include a scheme of superannuation under *section 940*) as the Minister, with the consent of the Minister of Finance, determines.

(4) A person appointed as the Director is, by virtue of the appointment, a civil servant within the meaning of the Civil Service Regulation Acts 1956 to 2005.

(5) The Director shall not hold any other office or employment for which remuneration is payable.

Removal, cessation or disqualification of Director.

937. (1) The Minister may at any time, for stated reasons, remove the Director from office.

(2) If the Director is removed from office under *subsection (1)*, the Minister shall ensure that a statement of the reasons for the Director's removal is laid before each House of the

Oireachtas.

(3) The Director shall cease to be the Director on -

- (a) being nominated as a member of Seanad Éireann;
- (b) being nominated as a candidate for election to either House of the Oireachtas or to the European Parliament;
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy; or
- (d) becoming a member of a local authority.

(4) A person is disqualified from appointment as the Director for so long as he or she is -

- (a) entitled under the Standing Orders of either House of the Oireachtas to sit in that House;
- (b) a member of the European Parliament; or
- (c) a member of a local authority.

Acting Director of Corporate Enforcement.

938. (1) Subject to *subsection (2)*, the Minister may appoint a person to be the Acting Director of Corporate Enforcement to perform the functions of the Director during -

- (a) a period, or during all periods, when the Director is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Director;
- (b) any suspension from office of the Director; or
- (c) a vacancy in the office of Director.

(2) A person shall not be appointed to perform the functions of the Director for a continuous period of more than 6 months during a vacancy in the office of Director.

(3) The Minister may, at any time, terminate an appointment under this section.

Functions of Director.

939. (1) The functions of the Director are -

- (a) to encourage compliance with this Act;
- (b) to investigate –
 - (i) instances of suspected offences under this Act; and
 - (ii) instances otherwise of suspected non-compliance with this Act or with the duties and obligations to which companies and their officers are subject;
- (c) to enforce this Act, including by the prosecution of offences by way of summary proceedings;
- (d) at his or discretion, to refer cases to the Director of Public Prosecutions where the Director has reasonable grounds for believing that an indictable offence under this Act has been committed;
- (e) to exercise, in so far as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act;
- (f) for the purpose of ensuring the effective application and enforcement of

obligations, standards and procedures to which companies and their officers are subject, to perform such other functions in respect of any matters to which this Act relates as the Minister considers appropriate and may by order confer on the Director;

- (g) to act under *Chapter 2* as a member of the Supervisory Authority and, if appointed under *section 896*, act as a director of that body; and
- (h) to perform such other functions for a purpose referred to in *paragraph (f)* as may be assigned to the Director under this Act or any other Act of the Oireachtas.

(2) The Director may do all such acts or things as are necessary or expedient for the performance of his or her functions under this Act or any other Act.

(3) The Director shall be independent in the performance of his or her functions.

(4) The Director may perform such of his or her functions as he or she thinks fit through an officer of the Director and in the performance of those functions the officer shall be subject to the directions of the Director only.

Superannuation.

940. (1) The Minister shall, with the consent of the Minister of Finance, if he or she considers it appropriate, make and carry out a scheme or schemes for granting superannuation benefits to or in respect of one or more of the following:

- (a) the Director;

- (b) the Acting Director:
- (c) any officer of the Director.

(2) Each superannuation scheme shall fix the terms and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different terms and conditions may be fixed in respect of different classes of persons.

(3) A superannuation scheme may be amended or revoked by a subsequent scheme made under this section with the consent of the Minister of Finance.

(4) The Minister shall not grant, or enter into any arrangement for the provision of, any superannuation benefit to or in respect of a person referred to in *subsection (1)* except -

- (a) in accordance with a superannuation scheme made under this section; or
- (b) with the consent of the Minister of Finance.

(5) In the case of a dispute as to the claim of any person to, or the amount of, any superannuation benefit payable under a superannuation scheme made under this section -

- (a) the dispute shall be submitted to the Minister;
- (b) the Minister shall refer the dispute to the Minister of Finance for his or her determination of it; and
- (c) the decision of the Minister of Finance shall be final.

(6) Every superannuation scheme made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has

sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Secondment to Director's office of member of Garda Síochána.

941. (1) This section applies where a member of the Garda Síochána has been seconded to the office of the Director.

(2) Notwithstanding the secondment, and without prejudice to *section 939(3) and (4)*, the person seconded shall continue to be under the general direction and control of the Commissioner of the Garda Síochána.

(3) For the purposes of this Act and for purposes outside this Act, the person seconded -

- (a) shall continue to be vested with the powers and to be subject to the duties of a member of the Garda Síochána; and
- (b) may continue to exercise those powers and perform those duties.

Delegation by Director.

942. (1) The Director may, in writing, delegate to an officer of the Director any of his or her powers under this or any other Act, except this power of delegation.

(2) A power delegated under *subsection (1)* shall not be exercised by the delegate except in accordance with the instrument of delegation.

(3) A delegate shall, on request by a person affected by the exercise of a power delegated to him or her, produce the instrument of delegation under this section, or a copy of that instrument, for inspection.

(4) A delegation under this section is revocable at will and does not prevent the exercise by the Director of a power so delegated.

Liability of Director or officer for acts and omissions.

943. Neither—

- (a) the Director or a former Director; nor
- (b) a present or former officer of the Director,

is liable for damages for anything done, anything purported to be done or anything omitted to be done by him or her in performing a function under this Act, unless the act or omission is shown to have been in bad faith.

Director's annual report.

944. (1) As soon as practicable but in any event not later than 4 months after the end of each year, the Director shall report in writing to the Minister about the activities of the Director during that year.

(2) The annual report shall be prepared in such manner and form as the Minister may direct.

(3) The Minister shall ensure that copies of the annual report are laid before each House of

the Oireachtas not later than 6 months after the end of the year to which the report relates.

(4) Nothing in *subsection (2)* shall be read as requiring the Director to include in the annual report information the inclusion of which would, in the Director's opinion, be likely to prejudice the performance of any of his or her functions.

Director shall report as required.

945. (1) Subject to *subsection (2)*, the Director shall –

- (a) provide the Minister with such information as the Minister may from time to time require about the performance of the Director's functions; and
- (b) when requested, account to an appropriately established Committee of either House of the Oireachtas for the performance of his or her functions.

(2) The Director shall not be required to –

- (a) provide the Minister or the Committee with information; or
- (b) answer a question by the Committee,

if the provision of the information or the answering of the question would, in the Director's opinion, be likely to prejudice the performance of any of his or her functions.

Confidentiality of information.

946. (1) No person shall disclose, except in accordance with law, information that–

- (a) is obtained in performing the functions of the Director; and
- (b) has not otherwise come to the notice of members of the public.

(2) Without limiting *subsection (1)*, the persons to whom that subsection applies include the following:

- (a) the Director or a former Director;
- (b) an officer of the Director.

(3) Nothing in *subsection (1)* shall prevent the disclosure of information by or under the authority of the Director if, and to the extent that, the Director considers the information is required-

- (a) for a purpose or reason specified in *section 781(a) to (m)*;
- (b) for the performance by a competent authority (as defined in *section 782*) of a function or functions by that authority; or
- (c) for the performance by the Director of a function or functions of the Director.

(4) Nothing in *subsection (1)* shall prevent the disclosure of information to any member of the Garda Síochána if that information, in the opinion of the Director or an officer of the Director, may relate to the commission of an offence other than an offence under this Act.

(5) A person who contravenes this section shall be guilty of a category 2 offence.

Disclosure of information to Director.

947. Notwithstanding any other law –

- (a) the Competition Authority;
- (b) a member of the Garda Síochána;
- (c) an officer of the Revenue Commissioners;

(d) the Irish Takeover Panel; or

(g) such other authority or other person as may be prescribed,

may disclose to the Director or an officer of the Director information that, in the opinion of the authority or other person disclosing it -

(i) relates to the commission of an offence under this Act or non-compliance otherwise with this Act or with the duties and obligations to which companies and their officers are subject; or

(ii) is information that could materially assist the Director or an officer of the Director in investigating whether an offence under this Act has been committed or whether there has been non-compliance otherwise with this Act or with the duties and obligations to which companies and their officers are subject.

Chapter 4

Company Law Review Group

Company Law Review Group.

948. (1) The Company Law Review Group, established by section 67 of the Company Law Enforcement Act 2001, shall continue in being.

(2) That Group is referred to in this Chapter as the “Review Group”.

Functions of Review Group.

949. (1) The Review Group shall monitor, review and advise the Minister on matters concerning-

- (a) the implementation of this Act;
- (b) the amendment of this Act;
- (c) where subsequent enactments amend this Act, the consolidation of those enactments and this Act or the preparation of a restatement under the Statute Law (Restatement) Act 2002 in respect of them;
- (d) the introduction of new legislation relating to the operation of companies and commercial practices in Ireland;
- (e) the Rules of the Superior Courts and judgments of courts relating to companies;
- (f) issues arising from the State's membership of the European Union in so far as they affect the operation of this Act;
- (g) international developments in company law in so far as they provide lessons for improved State practice; and
- (h) other related matters or issues, including issues submitted by the Minister to the Review Group for consideration.

(2) In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of this Act, enhance corporate governance and encourage commercial probity.

Membership of Review Group.

950. (1) The Review Group shall consist of the persons appointed by the Minister to be members of it.

(2) The Minister shall appoint a member of the Review Group to be its chairperson.

(3) Members of the Review Group shall be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

(4) A member of the Review Group may at any time resign his or her membership by letter addressed to the Minister.

(5) The Minister may at any time, for stated reasons, terminate a person's membership of the Review Group.

(6) Any appointment of a person as a member of the Review Group, or of a member of it as chairperson, made before the commencement of this section shall continue in being in accordance with its terms.

Meetings and business of Review Group.

951. (1) The Minister shall, at least once in every 2 years, after consultation with the Review Group, determine the programme of work to be undertaken by the Review Group over the ensuing specified period.

(2) A work programme determined by the Minister under section 70(1) of the Company Law Enforcement Act 2001 before the commencement of this section shall, for the unexpired portion of the period to which it relates, continue to be undertaken by the Review Group.

(3) Notwithstanding *subsection (1)*, the Minister may, from time to time, amend the Review Group's work programme, including the period to which it relates.

(4) The Review Group shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its work programme and may regulate the procedure of those meetings (including by the establishment of subcommittees and fixing a quorum) as it considers appropriate.

(5) The members shall elect one of themselves as chairperson for any meeting from which the chairperson of the Review Group is absent.

(6) A member of the Review Group, but not the chairperson, may nominate a deputy to attend in his or her place any meeting that the member is unable to attend.

Annual report and provision of information to Minister.

952. (1) Not later than 3 months after the end of each year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall ensure that copies of the report are laid before each House of the Oireachtas within 2 months after the date of receipt of the report.

(2) The report shall include information in such form and regarding such matters as the Minister may direct.

(3) The Review Group shall, if so requested by the Minister, provide a report to the Minister on any matter-

- (a) concerning the functions or activities of the Review Group; or
- (b) referred by the Minister to the Review Group for its advice.