

PART 23 PUBLIC OFFERS OF SECURITIES, FINANCIAL REPORTING BY TRADED COMPANIES, PREVENTION OF MARKET ABUSE, ETC.

CHAPTER 1 Public offers of securities

Interpretation (Chapter 1)

1348. (1) In this Chapter—

“2003 Prospectus Directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, including that Directive as it stands amended for the time being;

“body corporate” includes a company;

“EU prospectus law” means—

(a) the measures adopted for the time being by a Member State (including the State) or an EEA state, to implement the 2003 Prospectus Directive;

(b) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and

(c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or an EEA state in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

“Irish prospectus law” means—

(a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive of the European Communities Act 1972, regulations under section 1354 or any other enactment (other than, save where the context otherwise admits, this Chapter);

(b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and

(c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities;

“local offer” means an offer of securities to the public in the State where—

(a) the offer expressly limits the amount of the total consideration for the offer to less than €5,000,000 in relation to analogous limits specified by those regulations for any purpose);

(b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and

(c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Minister” means the Minister for Finance;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to subsection (5), a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

“prospectus” means a document or documents in such form and containing such information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004, implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—

(a) the contrary intention appears, or

(b) Irish prospectus law provides otherwise.

(3) For the purposes of this Chapter—

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form

and context in which it is included, and

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(4) Without limiting the meaning of that expression in any other context in which it is used in this Chapter, “statement” in section 1353 (2) (other than paragraph (b) thereof) and any other section of this Chapter that makes provision in respect of an expert, includes a report and a valuation.

(5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.

(6) For the purposes of sections 1349 and 1351, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

(a) a professional adviser to any person referred to in section 1349 acting as such,

(b) an underwriter or professional adviser to an underwriter acting as such.

(7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of subsection (6)(b).

(8) That case is one in which—

(a) a person (the “offeror”) intends to make an offer of securities to the public; and

(b) another person (the “purchaser”)—

(i) agrees to purchase those securities with the intention of their immediate resale, to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission; and

(ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.