

CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND BILL (NO. 2) 2003

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CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND BILL (NO. 2) 2003

ARRANGEMENT OF SECTIONS

ACTS REFERRED TO

Building Societies Act 1989	1942, No. 22
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Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Companies Act 1963	1963, No. 33
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Consumer Credit Act 1995	1995, No. 24
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Investment Intermediaries Act 1995	1995, No. 11
Stock Exchange Act 1995	1995, No. 9

CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND (NO. 2) BILL 2003

A BILL FOR

AN ACT TO AMEND THE CENTRAL BANK ACT 1942 FOR THE PURPOSES OF—

- (a) ESTABLISHING THE BUREAU OF THE FINANCIAL SERVICES OMBUDSMAN AND PRESCRIBING THE FUNCTIONS AND POWERS OF THAT OMBUDSMAN;
- (b) PROVIDING FOR THE ESTABLISHMENT OF CONSULTATIVE PANELS TO ADVISE THE REGULATORY AUTHORITY ON CERTAIN MATTERS;
- (c) MAKING FURTHER PROVISION FOR THE AUDITING OF THE ACCOUNTS OF FINANCIAL SERVICE PROVIDERS; AND
- (d) TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1 PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Central Bank and Financial Services Authority of Ireland (No. 2) Act 2003.

(2) This Act comes into operation on such day or days as may be fixed by an order or orders made by the Minister for Finance, either generally or with reference to any particular purpose or provision. Different days may be fixed for different purposes and different provisions.

PART 2

AMENDMENT OF CENTRAL BANK ACT 1942

Interpretation: Part 2

2.—(1) In this Part, “the Principal Act” means the Central Bank Act 1942.

Amendment of section 2 of Principal Act (Interpretation)

3.—Section 2 of the Principal Act (as substituted by section 3 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

- (a) by inserting the following definition after the definition of “constituent part” in subsection (1):

“‘consumer’ means a person who uses, or seeks to use, a service provided by a regulated financial service provider, but, except to the extent that the regulations so provide, does not include a body corporate or business firm;
- (b) by inserting the following definition after the definition of “Currency Act 1927” in subsection (1):

“‘Deputy Financial Services Ombudsman’ means the person holding office or acting as Deputy Financial Services Ombudsman under section 57BK;”, and
- (c) by inserting the following definition after the definition of “Director”:

“‘EEA country’ means a country that is a member of the European Economic Area;”;
- (d) by inserting the following definitions after the definition of “financial services” in subsection (1):

“‘Financial Services Ombudsman’ means the person holding office or acting as Financial Services Ombudsman under section 57BI;

‘financial service provider’ means a person who carries on a business of providing one or more financial services to consumers;”;
- (e) by inserting the following definition after the definition of “power” in subsection (1):

“‘publication’, in relation to a report or other document, includes publishing the report or document in an accessible form on an Internet website;”;
- (f) by inserting the following definition after the definition of “record” in subsection (1):

“‘regulated financial service provider’ means—

 - (a) a financial service provider whose business is subject to regulation by the Bank or the Regulatory Authority under this Act or under a designated enactment or a designated statutory instrument, or
 - (b) a financial service provider—
 - (i) whose business is subject to regulation by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank or the Regulatory Authority under this Act or under a designated enactment or designated statutory instrument, and
 - (ii) includes the provision of financial services within the State;”;
- (g) by inserting the following subsection after subsection (4):

“(5) For the purposes of this Act, a director of a body corporate, or a partner of a firm, that is a regulated financial service provider is taken to be concerned in the management of

the financial service provider even though the person is not involved in the day to day administration of the body or firm.”

Amendment of section 20 of Principal Act (Prohibition of the Governor holding shares in a bank)

4.— Section 20 of the Principal Act is amended—

- (a) by substituting “financial institution” for “bank” wherever it occurs;
- (b) by inserting the following subsection after subsection (4):
 - “(4A) This section does not prohibit the Governor from—
 - (a) entering into a policy of insurance, or
 - (b) purchasing units of, or participating in, a collective investment scheme whose funds are invested in bonds or equities generally (including the bonds or shares of a financial institution), or
 - (c) establishing and maintaining an ordinary savings account with a building society or a friendly society.”;
- (c) by substituting the following subsection for subsection (5):
 - “(5) In this section—
 - ‘bank’ includes a bank incorporated outside the State as well as a bank incorporated in the State;
 - ‘financial institution’ includes a credit institution and an insurance undertaking;
 - ‘shares’, in relation to a bank, include stock, shares, debentures, debenture, stock, bonds and other securities of the bank.”.

Amendment of section 33AK of Principal Act

5.—(1) Section 33AK of the Principal Act (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland (No.2) Act 2003) is amended—

- (a) in subsection (5)(aj), by substituting “functions, or” for “functions.”, and
- (b) by inserting after subsection (2)(aj)—
 - “(ak) to the Financial Services Ombudsman that is required for the performance of that Ombudsman’s functions, or
 - (aj) to any body established by or under an enactment for the purpose of supervising the conduct of auditors.”.

New Part IIIC inserted in Principal Act

6.— The Principal Act is amended by inserting the following Part after Part IIIB (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003):

“PART IIIC

ENFORCEMENT OF DESIGNATED ENACTMENTS AND DESIGNATED STATUTORY
INSTRUMENTS

Interpretation (Part IIIC and Schedule 4A)

33AN.— In this Part and *Schedule 4A*—

‘allegation’ means an allegation made by a person (including a member or officer of the Regulatory Authority) that a regulated financial service provider has—

- (a) contravened a provision of a designated enactment or designated statutory instrument, or
- (b) any condition or requirement imposed under such a provision;

‘contravene’ includes fail to comply, and also includes—

- (a) attempting to contravene, and
- (b) aiding and abetting and counselling and procuring a person to commit a contravention, and
- (c) inducing, attempting to induce, a person (whether by threats or promises or otherwise) to commit a contravention, and
- (d) being (directly or indirectly) knowingly concerned in, or a party to, a contravention, and
- (e) conspiring with others to commit a contravention;

‘contribute’, in relation to a person concerned in the management of a regulated financial service provider, includes facilitate;

‘decision’, in relation to an allegation, means the findings made in respect of the allegation and, if the allegation is found to be substantiated, any sanction imposed in consequence of those findings;

‘inquiry’ means an inquiry held under this Part;

‘licence’, in relation to a regulated financial service provider, means the licence, registration, authorisation or other form of authority that authorises the financial service provider to carry on a business of providing a financial service;

‘notice’ means notice in writing;

‘Panel’ means the Regulatory Authority Sanctions Panel;

‘revoke’ includes cancel.

Establishment of Regulatory Authority Sanctions Panel

33AO.—(1) The Regulatory Authority Sanctions Panel is established by this section as a committee of that Authority.

(2) The Panel is to consist of not fewer than 6 and not more than 9 eligible persons appointed by the Regulatory Authority and, for the purpose of a particular inquiry, is constituted by 3 members of the Panel.

- (3) The following are eligible for appointment under *subsection (2)*:
 - (a) members and officers of the Regulatory Authority;
 - (b) employees of the Bank;
 - (c) other persons who, in the opinion of that Authority, have expertise in the operation of regulated financial service providers, or any relevant class of those financial service providers.
- (4) The Regulatory Authority shall appoint one of the members of the Panel to be its convenor and another to be its deputy convenor.
- (5) *Schedule 4A* has effect in relation to the members of the Panel.

Reference of allegation to Panel

33AP.—(1) If the Regulatory Authority is of the opinion that an inquiry should be held into an allegation that a regulated financial service provider has—

- (a) contravened a provision of a designated enactment or designated statutory instrument, or
- (b) any condition or requirement imposed under such a provision,

it shall refer the allegation to the convenor, together with the grounds on which the allegation is based and any documents or materials that may assist the Panel in deciding whether or not the allegation is substantiated.

(2) On receiving a reference under *subsection (1)*, the convenor shall convene an inquiry by designating 3 members of the Panel (including the convenor or deputy convenor) to inquire into the allegation. However, the convenor shall not designate any member who has been directly or indirectly involved in the investigation of the allegation that is to be the subject of the inquiry.

(3) If the Panel constituted to inquire into an allegation includes the convenor, the convenor is to be chairperson of the inquiry. If the Panel so constituted does not include the convenor, the deputy convenor is to be the chairperson of the inquiry.

Chairperson to serve notice of inquiry on regulated financial service provider concerned

33AQ.—As soon as practicable after convening an inquiry under *section 33AP*, the chairperson of the inquiry shall serve on the regulated financial service provider concerned a notice alleging that the financial service provider has contravened—

- (a) a specified provision of a designated enactment or a designated statutory instrument, or
 - (b) a specified condition or requirement imposed under such a provision.
- (2) The notice must—
- (a) specify the grounds on which the allegation is based, and
 - (b) specify a date, time and place at which the Panel will hold an inquiry into the

- allegation, and
- (c) invite the financial service provider concerned to attend the inquiry.
- (3) The notice may contain more than one allegation.

Panel to inquire into allegation

34AR.—(1) The Panel shall hold an inquiry into an allegation at the date, time and place specified in the notice served in accordance with *section 33AQ*, or at such later date, time and place as may have been subsequently notified to the regulated financial service provider concerned.

(2) A regulated financial service provider who does not wish to attend such an inquiry may, before the date of the inquiry, lodge with the convenor any written submissions that the service provider wishes the Panel to take into account when considering the allegation.

(3) The Panel may adjourn an inquiry from time to time and from place to place, but, if it does so, it shall ensure that the regulated financial service provider concerned is notified of the date, time and place at which the adjourned inquiry is to be resumed.

(4) The Panel may proceed with an inquiry in the absence of the regulated financial service provider concerned if that financial service provider fails to attend the inquiry on the date, and at a time and place, notified in accordance with this Part.

Proceedings at inquiries

33AS.—(1) The Panel shall conduct an inquiry with as little formality and technicality, and with as much expedition, as a proper consideration of the allegation that is the subject of the inquiry will allow.

(2) At an inquiry, the Panel—

- (a) is not bound by the rules of evidence, and
- (b) may, on such conditions as it thinks fit, permit a person to intervene, and
- (c) shall observe the rules of natural justice.

(3) When holding an inquiry, the Panel may, if it so chooses, be assisted by a legal practitioner.

(4) A regulated financial service provider against whom an allegation has been made is entitled to be assisted or represented at an inquiry by a legal practitioner or by any other person.

Inquiry normally to be held in public

33AT.—(1) Except as provided by this section, the Panel shall hold an inquiry in public.

(2) The Panel may decide to hold an inquiry in private if satisfied that a person's reputation would be unfairly prejudiced if the inquiry were to be held in public.

(3) The Panel may decide to hold a part of an inquiry in private if satisfied that—

- (a) evidence is likely to be given, or a matter is likely to arise, during the inquiry that is of a confidential nature, or
 - (b) evidence is likely to be given, or a matter is likely to arise, during the inquiry that could also be given in evidence, or could also arise, in proceedings for an offence against a law of the State, or
 - (c) the public disclosure of particular information at the inquiry would contravene a law of the State.
- (4) The Panel may make a decision under *subsection (2) or (3)* either on its own initiative or at the request of the regulated financial service provider concerned.

Power to summon witnesses and take evidence

- 33AU.—(1) The chairperson of an inquiry may, in writing—
- (a) summons a person to appear at the inquiry to give evidence as a witness or to produce specified documents, or to do both, and
 - (b) require the person to attend at the inquiry from day to day until the Panel excuses or releases the person from further attendance.
- (2) The Panel may take evidence on oath at an inquiry and, for that purpose, the chairperson may—
- (a) require a witness to take an oath, and
 - (b) administer an oath to the witness.
- (3) The oath to be taken by a witness for the purposes of this section is an oath that the evidence the witness will give will be true.
- (4) The chairperson of an inquiry—
- (a) may require a witness to answer a question, and
 - (b) may require a person appearing at the inquiry in accordance with a summons issued under this section to produce a document specified in the summons.
- (5) The chairperson of an inquiry may allow a witness at an inquiry to give evidence by tendering a written statement, which, if the chairperson so requires, must be verified by oath.

Decisions of Panel

- 33AV.—(1) On completing its inquiries into an allegation, the Panel shall decide whether or not the allegation is substantiated.
- (2) If the Panel finds that an allegation against a regulated financial service provider is substantiated, it may impose on the financial service provider one or more of the following sanctions:
- (a) a caution or reprimand;
 - (b) an order to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service by the

financial service provider;

- (c) an order to pay to the Regulatory Authority a monetary penalty not exceeding the prescribed amount;
- (d) an order to pay to the Regulatory Authority all or a specified part of the costs incurred by that authority in investigating the allegation.

(3) For the purpose of *subsection (2)(c)*, the prescribed amount is—

- (a) €250,000, or
- (b) if the regulations prescribe some other amount of money for that purpose, that other amount.

(4) If, on finding that an allegation against a regulated financial service provider is substantiated, the Panel also finds that a person concerned in the management of the financial service provider contributed to the contravention to which the allegation relates, it may impose on the person one or more of the following sanctions:

- (a) a caution or reprimand;
- (b) an order to pay to the Regulatory Authority a monetary penalty not exceeding the prescribed amount;
- (c) an order disqualifying the person from being involved in the direction, management or conduct of the business of a regulated financial service provider, either permanently or for such period as is specified in the order;
- (d) an order to pay to the Regulatory Authority all or a specified part of the costs incurred by that Authority in investigating the allegation.

(5) For the purpose of *subsection (4)(b)*, the prescribed amount is—

- (a) €100,000, or
- (b) if the regulations prescribe some other amount of money for that purpose, that other amount.

(6) The Panel may not impose a sanction on a person under *subsection (4)* without giving the person an opportunity to be heard, and allowing the person to be represented by a legal practitioner or other person, in relation to the matter.

(7) At the conclusion of an inquiry, the Panel shall set out in writing—

- (a) its findings in respect of an allegation, and
- (b) the grounds on which its findings are based, and
- (c) if the Panel has found the allegation to be substantiated, the sanctions (if any) imposed under this section in respect of the allegation.

(8) This section does not limit the operation of a designated enactment or a designated statutory instrument that provides for the revocation or suspension of the licence of a regulated financial service provider.

Offence for regulated financial service provider to employ disqualified person

33AW.—(1) A regulated financial service provider shall not employ or otherwise involve a person who is subject to a disqualification order imposed under this section.

(2) A regulated financial service provider who contravenes *subsection (1)* commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €2,000, or
- (b) on conviction on indictment, to a fine not exceeding €75,000.

Panel to deliver decision to Regulatory Authority for confirmation

33AX.—(1) As soon as practicable after concluding an inquiry into an allegation, the Panel shall deliver its decision to the Regulatory Authority for confirmation.

(2) On receiving a decision of the Panel in respect of an allegation, the Regulatory Authority shall confirm the decision, unless it is satisfied on reasonable grounds that there are substantial grounds for not doing so, in which case that Authority shall—

- (a) remit the decision to the Panel for further consideration, or
- (b) quash the decision and substitute for the decision any decision that the Panel could have made in respect of the allegation.

(3) A decision of the Panel that is confirmed by the Regulatory Authority is for all purposes to be regarded as the decision of that Authority.

(4) If the Regulatory Authority—

- (a) remits to the Panel a decision of the Panel for further consideration, or
- (b) quashes a decision of the Panel and substitutes for the decision its own decision,

it shall specify in writing its reasons for so doing.

Notification and publication of decision

33AY.—As soon as practicable after confirming or substituting a decision of the Panel, the Regulatory Authority shall—

- (a) notify the decision to the regulated financial service authority, and to any other person, who is affected by the decision, and
- (b) publish details of the decision in such publication and in such form and manner, as it considers appropriate.

Decision to be appealable

33AZ.—A decision confirmed or substituted by the Regulatory Authority is an appealable decision for the purposes of Part VIIA.

Regulated financial service provider or person not to be liable twice for same contravention

33BA.—(1) A regulated financial service provider is not liable to be prosecuted under a designated enactment or designated statutory instrument for, or to be found guilty of, an offence relating to a contravention of the provision, or a condition or requirement imposed under the provision, if the Panel has held or is holding an inquiry into an allegation relating to the contravention.

(2) If the Panel—

- (a) has found at an inquiry that a regulated financial service provider has contravened a provision of a designated enactment or designated statutory instrument, or a condition or requirement imposed under such a provision, and
- (b) has also found that a person concerned in the management of the financial service provider contributed to the contravention,

the person is not liable to be prosecuted under the provision for an offence relating to the contravention.

(3) The Panel may not impose a monetary penalty under *section 33AV* on a regulated financial service provider in respect of a contravention of a provision of a designated enactment or designated statutory instrument, or a condition or requirement imposed under such a provision, if —

- (a) the financial service provider has been charged with an offence under the provision or a related provision of the enactment or statutory instrument, and
- (b) the charge is pending or the financial service provider has been either found guilty or not guilty of having committed the offence, and
- (c) the contravention relates to the same or substantially the same matter as that to which the offence relates.

(4) The Panel may not impose a monetary penalty under *section 33AV* on a person concerned in the management of a regulated financial service provider in relation to a contravention by the financial service provider of a provision of a designated enactment or designated statutory instrument, or of a condition or requirement imposed under the provisions, if —

- (a) the person has been charged with an offence under the provision or under a related provision of the enactment or statutory instrument, and
- (b) the charge is pending or the person has been either found guilty or not guilty of having committed the offence, and
- (c) the contravention relates to the same or substantially the same matter as that to which the offence relates.

Enforcement of orders imposing a monetary penalty

33BB.—The Regulatory Authority may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Bank the amount of a money penalty imposed under *section 33AV* on a regulated financial service provider or other person.

Reference to Court of question of law arising at inquiry

33BC.—(1) The Panel may, on its own initiative or at the request of the regulated financial service provider or other person concerned, refer to the Court for decision a question of law arising at an inquiry.

(2) If a question has been referred under *subsection (1)*, the Panel shall not, in relation to a matter to which the inquiry relates:

- (a) give while the reference is pending a decision to which the question is relevant; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question.

(3) If a question is referred under *subsection (1)*—

- (a) the Panel shall send to the Court all documents that were before the Panel in connection with the inquiry; and
- (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the Panel.

Protection of members of Panel

33BD.—(1) Members of the Panel have, in performing or exercising any of their functions and powers in connection with holding an inquiry, the same protection and immunity as a judge of the High Court.

(2) A legal practitioner or other person appearing on a person's behalf at an inquiry has the same protection and immunity as a barrister has when representing a party in a proceeding in the High Court.

(3) Subject to this Part, a person who is required by a summons to attend an inquiry as a witness or to produce documents is entitled to the same protection as a witness in proceedings in the High Court.”.

Amendment of section 57A of Principal Act

7.—Section 57A of the Principal Act is amended—

- (a) in subsection (1), by substituting the following definition for the definition of “appealable decision”:

“‘appealable decision’ means a decision of the Regulatory Authority that a provision of a designated enactment or designated statutory instrument declares to be an appealable

- decision for the purposes of this Part;”;
- (b) by deleting subsections (2) and (3);
 - (c) by renumbering subsection (4) as subsection (2).

New Part VIIB inserted into Principal Act

8.—The Principal Act is amended by inserting the following Part after Part VIIA (as inserted by section 28 of the Central Bank and Financial Services Act 2003):

“PART VIIB

FINANCIAL SERVICES OMBUDSMAN

CHAPTER 1

INTERPRETATION: PART VIIB

Definitions

57BA.—In this Part—

- ‘Bureau’ means the Financial Services Ombudsman’s Bureau;
- ‘Bureau staff member’ means a person appointed under *section 57BM*;
- ‘complaint’ means a complaint made by a consumer under this Part about the conduct of a regulated financial services provider;
- ‘conduct’ includes alleged conduct;
- ‘Council’ means the Financial Services Ombudsman Council established by *section 57BB*;
- ‘Council regulations’ means regulations made by the Council under *section 57BE* and in force;
- ‘investigation’ means an investigation of a complaint;
- ‘parties’ in relation to a complaint, means the complaint, the regulated financial service provider against whom the complaint is made, and any other person who, in the opinion of the Financial Services Ombudsman, should be treated as a party to the complaint.

CHAPTER 2

Financial Services Ombudsman Council

Establishment of Financial Services Ombudsman Council

57BB.—(1) There is established by this section a Council called ‘The Financial Services Ombudsman Council’.

(2) The Council is to consist of such number of persons, not fewer than 5 nor more than 10, as the Minister decides.

(3) The Minister shall appoint the members of the Council, but only after consulting the Minister for Enterprise, Trade and Employment. At least one of the members must be a person who has knowledge or experience of consumer issues relating to the provision of financial services and at least one of the other members must be a person who has knowledge or experience of the financial services industry.

(4) The Minister shall appoint a Chairperson from among the members of the Council who have knowledge or experience of consumer issues relating to the provision of financial services.

(5) A member of the Council holds office for such period, not exceeding 5 years, as is specified in the member's document of appointment, unless the member ceases to hold office under *Schedule 6*.

(6) Such a member is eligible for reappointment.

(7) *Schedule 6* has effect with respect to the Council.

Functions and powers of Financial Services Ombudsman Council

57BC.—(1) The functions of the Council are—

(a) to prescribe guidelines under which the Financial Services Ombudsman is to operate, and

(b) to determine the levies and charges payable for the performance of services provided by the Financial Services Ombudsman, and

(c) to appoint the Financial Services Ombudsman and all Deputy Financial Services Ombudsmen, and

(d) to keep under review the efficiency and effectiveness of the Bureau and to advise the Minister, either at the Minister's request or on its own initiative, on any matter relevant to the operation of the Bureau, and

(e) to advise the Ombudsman on any matter on which the Ombudsman seeks advice, and

(f) to carry out such other activities as are prescribed by this Part.

(2) The Council has no role with respect to how the Financial Services Ombudsman deals with a particular complaint.

(3) The Council has such powers as are necessary to enable it to perform its functions.

Council may impose levies and fees for the purposes of this Part

57BD.—(1) The purpose of this section is to enable the Financial Services Ombudsman to have sufficient funds to enable it to perform the functions imposed, and to exercise the powers conferred, on that Ombudsman by this or any other Act.

- (2) Council Regulations may prescribe —
 - (a) levies to be paid by specified classes of financial service providers, and
 - (b) fees to be paid by complainants for the processing and investigation of their complaints.
- (3) Without limiting *subsection (1)*, Council Regulations may provide for any of the following matters:
 - (a) the persons, or classes of persons, who are required to pay specified kinds of levies or fees;
 - (b) the amounts of those levies or fees;
 - (c) the periods in respect of which, or the dates by which, specified levies or fees are to be paid to the Financial Services Ombudsman;
 - (d) penalties that are payable by a person who fails to pay a levy on time or pay a required fee;
 - (e) the keeping of records, and the making of returns to the Financial Services Ombudsman, by persons who are liable to pay a specified levy or specified fees;
 - (f) the collection and recovery of levies and fees.
- (4) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount of levy or fee payable under Council Regulations made for the purpose of this section.

Council to make regulations for the purposes of this Part

- 57BE.—(1) The Council shall make regulations for or with respect to matters—
- (a) that are, by this Part, required or permitted to be prescribed, or
 - (b) that are necessary or convenient to be prescribed for the purpose of enabling the Financial Service Ombudsman to perform the functions imposed, and to exercise the powers conferred, on that Ombudsman by this Part.
- (2) In particular, a regulation under *subsection (1)* may do any of the following:
- (a) prescribe matters that the Financial Services Ombudsman must take into account when investigating or adjudicating a complaint;
 - (b) prescribe procedures to be followed in processing a complaint;
 - (c) specify circumstances in which the Financial Services Ombudsman can dismiss a complaint without considering its merits;
 - (d) require regulated financial service providers to include in their advertisements, and in other forms of communication, specified information about the rights that consumers have under this Part;
 - (e) specify the place or places at which the Financial Services Ombudsman is required to make available copies of any report that that Ombudsman is, by a

provision of this Part, required to prepare or publish.

(3) Regulations under this section can be made either on the initiative of the Council or at the request of the Financial Services Ombudsman, but they do not take effect until the Minister has consented to them in writing.

Council chairperson to provide Minister with reports

57BF.—The chairperson of the Council is required to provide the Minister with such reports relating to the activities of the Bureau as the Minister requires from time to time. However, such a report must not include particulars or comments on any complaint that is then being considered by the Financial Services Ombudsman.

Council chairperson to appear before Oireachtas committee when required

57BG.—(1) The chairperson of the Council is required to attend a meeting of a joint committee of the Houses of the Oireachtas whenever asked to do so by the committee and to provide such information (including documents) as the committee specifies and as is in the possession of, or is available to, that chairperson.

(2) Such a committee is not entitled to request the chairperson of the Council to provide information relating to any complaint that is then being investigated by the Financial Services Ombudsman. The chairperson must refuse to comply with a request from the committee to provide it with any such information.

CHAPTER 3

Financial Services Ombudsman's Bureau

Financial Services Ombudsman's Bureau

57BH.—(1) There is established by this section a bureau called the “Financial Services Ombudsman's Bureau”.

(2) The Bureau consists of the Financial Services Ombudsman, each Deputy Financial Services Ombudsman and the staff members holding office under *section 57BM*.

Financial Services Ombudsman

57BI.—(1) The Council shall, whenever the occasion requires, appoint a suitably qualified person to be the Financial Services Ombudsman. However, if a person has been appointed as Financial Services Ombudsman or as Financial Services Ombudsman designate before the commencement of this section, that person is taken to have been appointed by the Council under this subsection.

(2) Subject to *Schedule 7*, a person appointed as the Financial Services Ombudsman holds office for such period, not exceeding 6 years, as is specified in the document of appointment.

(3) Such a person is eligible for reappointment at the end of a period of office.

(4) A person is not eligible for appointment as the Financial Services Ombudsman if the person—

(a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann, or

(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or

(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member.

Functions and powers of Financial Services Ombudsman

57BJ.—(1) The principal function of the Financial Services Ombudsman is to deal with complaints made under this Part by mediation and, where necessary, by investigation and adjudication.

(2) Subject to this Part, the Financial Services Ombudsman has such powers as are necessary to enable that Ombudsman to perform the principal function referred to in *subsection (1)*.

(3) The Financial Services Ombudsman may authorize any Deputy Financial Services Ombudsman or any other Bureau staff member, by name, office or appointment, to perform any of the functions, or exercise any of the powers, imposed or conferred on the Financial Services Ombudsman by this or any other Act.

(4) The Financial Services Ombudsman is entitled to perform the functions imposed, and the powers conferred, by this Act free from interference by any other person.

Deputy Financial Services Ombudsman

57BK.—(1) The Financial Services Ombudsman Council shall, whenever the occasion requires, appoint one or more suitably qualified persons to be Deputy Financial Services Ombudsmen. However, if a person has been appointed as a Deputy Financial Services Ombudsman or as a Deputy Financial Services Ombudsman designate before the commencement of this section, that person is taken to have been appointed by the Council under this subsection.

(2) Subject to *Schedule 7*, a person appointed as a Deputy Financial Services Ombudsman holds office for such period, not exceeding 6 years, as is specified in the document of appointment.

(3) Such a person is eligible for reappointment at the end of a period of office.

(4) A person is not eligible for appointment as a Deputy Financial Services Ombudsman if the person—

(a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann, or

(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or

(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member.

(5) Within the scope of the authority conferred by the Financial Services Ombudsman, a Deputy Financial Services Ombudsman may perform any of the functions, or exercise any of the powers, of the Financial Services Ombudsman imposed or conferred on the Financial Services Ombudsman by this or any other Act.

(6) Any act done or omitted to be done in accordance with *subsection (4)* is taken to have been done or omitted to have been done by the Financial Services Ombudsman.

(7) A Deputy Financial Services Ombudsman is entitled to perform the functions and powers authorised under *subsection (4)* free from interference by any other person, except that that Ombudsman shall—

(a) comply with directions given by the Financial Services Ombudsman, and

(b) keep the Financial Services Ombudsman informed about the progress made with respect to dealing with complaints that are assigned to the Deputy Financial Services Ombudsman.

Acting Financial Services Ombudsman

57BL.—(1) The Council shall appoint the Deputy Financial Services Ombudsman, or, if there are two or more such Ombudsmen, one of those Ombudsmen, to act as Financial Services Ombudsman during the absence of the Financial Services Ombudsman or during a vacancy in the office that Ombudsman.

(2) No one is entitled to question the appointment under this section of a Deputy Financial Services Ombudsman to act as Financial Services Ombudsman.

(3) A Deputy Financial Services Ombudsman is, when acting as the Financial Services Ombudsman, taken to be that Ombudsman.

Bureau staff

57BM.—(1) Subject to this section, the Financial Services Ombudsman is responsible for appointing and employing persons necessary for the proper functioning of the Bureau.

(2) Persons may be appointed under *subsection (1)* on a permanent, temporary or part-time basis or as consultants.

(3) Persons appointed under *subsection (1)* are to be employed on such terms and conditions (including conditions as to remuneration and allowances) as the Council determines. In making a determination under this subsection, the Council is to have regard to—

- (a) the Government's policy with respect to the remuneration of public sector employees, and
- (b) any directions that the Minister may give from time to time for the purpose of giving effect to that policy.

(4) Within the scope of the authority conferred by the Financial Services Ombudsman, a person appointed under *subsection (1)* may perform any of the functions, or exercise any of the powers, of the Financial Services Ombudsman imposed or conferred on the Financial Services Ombudsman by this or any other Act.

(5) Any act done or omitted to be done in accordance with *subsection (5)* is taken to have been done or omitted to have been done by the Financial Services Ombudsman.

(6) A Bureau staff member is entitled to perform the functions and powers authorised under *subsection (5)* free from interference from any other person, except that the staff member shall—

- (a) comply with directions given by the Financial Services Ombudsman or a Deputy Financial Services Ombudsman, and
- (b) keep the Financial Services Ombudsman, or the appropriate Deputy Financial Services Ombudsman, informed about the progress made with respect to dealing with complaints that are assigned to the staff member.

(7) *Schedule 7* has effect with respect to the Financial Services Ombudsman, the Deputy Financial Services Ombudsman and the members of the Bureau staff appointed under this section.

Immunity of Financial Services Ombudsman and others

57BN.—(1) A Bureau staff member is not liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings in respect of any act done or omitted to be done in the course of performing a function imposed, or exercising a power conferred on the member by or under this or any other Act unless the act was done, or omitted to be done, in bad faith.

(2) Civil or criminal proceedings in respect of any act or omission referred to in *subsection (1)* may be brought against a Bureau staff member only with the leave of the High Court.

(3) The High Court may grant leave under *subsection (2)* only if satisfied that there is substantial evidence that the person to be proceeded against has acted, or omitted to act, in bad faith.

(4) For the purposes of this section, “bureau staff member” includes the Financial Services Ombudsman and each of the Deputy Financial Services Ombudsmen.

CHAPTER 4

Accounts and reports

Financial Services Ombudsman to ensure proper accounts are kept in respect of the Bureau

57BO.—(1) The Financial Services Ombudsman shall ensure that accounting records are kept that properly record and explain the financial transactions of or relating to the Bureau.

(2) The Financial Services Ombudsman shall ensure that the accounting records relating to the Bureau comply with the accounting standards (if any) notified in writing to the Financial Services Ombudsman by the Council, acting on the advice of the Minister.

(3) The Financial Services Ombudsman shall ensure that the accounting records relating to the Bureau are kept for 6 years after the transactions to which they relate are completed. The Financial Services Ombudsman may, at the end of that period, either direct that those records be retained or arrange for them to be disposed of in such manner as that Ombudsman considers appropriate. This subsection has effect despite any other enactment to the contrary.

(4) The Financial Services Ombudsman is required to make the accounting records available at all reasonable times for inspection by any member of the Council who requests to see them.

Financial Services Ombudsman to arrange for preparation of annual statements of account

57BP.—(1) Within 6 months after the end of each financial year, the Financial Services Ombudsman shall arrange for the preparation and transmission to the Comptroller and Auditor General of a statement of accounts for the year. The statement must be in a form approved by the Council acting in consultation with the Minister. A form of statement approved under this subsection remains in force until superseded by another form of statement so approved.

(2) The Comptroller and Auditor General shall audit, certify and report on the statement of accounts and, as soon as practicable after completing the report, give the report and the statement to the Financial Services Ombudsman and to the Council.

Financial Services Ombudsman to prepare annual report of activities of the Bureau

57BQ.—(1) The Financial Services Ombudsman shall, not later than 6 months after the end of a financial year—

- (a) prepare an annual report specifying the activities of the Bureau during that year, and
- (b) submit the report to the Council.

(2) An annual report must be in such form and deal with such matters as the Council has notified to the Financial Services Ombudsman and must include or be accompanied by the audited statement of accounts prepared for the financial year concerned.

(3) As soon as practicable after receiving an annual report, the Council shall deliver the report to the Minister.

(4) As soon as practicable after receiving an annual report, the Minister shall arrange for a copy of the report to be laid before both Houses of the Oireachtas.

(5) On becoming aware that *subsection (4)* has been complied with, the Financial Services Ombudsman shall arrange for the publication of the annual report.

Financial Services Ombudsman to publish certain other reports

57BR.—(1) Within 3 months after the end of each financial year, the Financial Services Ombudsman shall publish a report containing a summary of all complaints made under *Chapter 4* during the preceding financial year and of the results of the investigations into those complaints.

(2) The Financial Services Ombudsman may publish such a report more frequently than once a year if that Ombudsman thinks it would be in the public interest to do so.

(3) The Financial Services Ombudsman may, with the approval of the Council, publish reports on other matters relating to the operation of the Bureau.

Financial Services Ombudsman to arrange for preparation of annual estimate of income and expenditure

57BS.—(1) Not later than 3 months before the beginning of each financial year, or within such extended period as the Council may allow, the Financial Services Ombudsman shall arrange for—

- (a) the preparation of a statement setting out estimates of the income and expenditure relating to the Bureau for that year, and
- (b) submit the statement to the Council for approval.

(2) The statement must—

- (a) specify the amounts expected to be collected and recovered during the financial year concerned from the imposition of levies and fees under *section 57BD*, and

- (b) specify any other sources from which funds are expected to be obtained during that year to finance the Bureau’s activities and the amounts expected to be raised from those sources, and
 - (c) specify the activities that the Bureau proposes to undertake during that year.
- (3) Before submitting the statement to the Council for approval, the Financial Services Ombudsman shall provide it with particulars of the estimates referred to in *subsection (1)(a)*. As soon as practicable after being provided with those particulars, the Council shall give the Financial Services Ombudsman its views on those estimates.

Financial Services Ombudsman to prepare strategic plan

57BT.—(1) The Financial Services Ombudsman shall, at least 3 months before the beginning of each financial year—

- (a) prepare for the year a strategic plan that complies with this section, and
 - (b) submit the plan to the Council for its approval.
- (2) A strategic plan must specify—
- (a) the objectives of the activities of the Bureau for the financial year concerned, and
 - (b) the nature and scope of the activities to be undertaken, and
 - (c) the strategies and policies for achieving those objectives, and
 - (d) targets and criteria for assessing the performance of the Bureau, and
 - (e) the uses for which it is proposed to apply the Bureau’s resources.
- (3) If the Council has in writing notified the Financial Services Ombudsman of any requirements with respect to the form in which the strategic plan is to be prepared, the plan must comply with those requirements.
- (4) As soon as practicable after approving a strategic plan, the Council shall deliver the plan to the Minister.
- (5) As soon as practicable after receiving the Financial Services Ombudsman’s strategic plan, the Minister shall arrange for a copy of the plan to be laid before both Houses of the Oireachtas.
- (6) On becoming aware that *subsection (5)* has been complied with, the Financial Services Ombudsman shall—
- (a) arrange for the publication of the strategic plan, and
 - (b) take all reasonably practical steps to implement it.

Financial Services Ombudsman to provide Council and Minister with reports

57BU.—(1) The Financial Services Ombudsman is required to provide the Council or the Minister with such reports relating to the activities of the Bureau as the Council or the Minister requires from time to time. However, such a report must not include particulars or

comments on any complaint that is then being considered by the Financial Services Ombudsman.

(2) The obligation imposed by *subsection (1)* is in addition to that imposed by *section 57BQ*.

Financial Services Ombudsman to appear before Oireachtas committee when required

57BV.—(1) The Financial Services Ombudsman is required to attend a meeting of a joint committee of the Houses of the Oireachtas whenever asked to do so by the committee and to provide such information (including documents) as the committee specifies and as is in the possession of, or is available to, that Ombudsman.

(2) Such a committee is not entitled to request the Financial Services Ombudsman to provide information relating to any complaint that is currently under investigation. The Financial Services Ombudsman must refuse to comply with a request from the committee to provide it with any such information.

CHAPTER 5

How consumer complaints are to be dealt with

Complaints about conduct of regulated financial services providers

57BW.—(1) A consumer may complain to the Financial Services Ombudsman about the conduct of a regulated financial service provider.

- (2) A consumer is not entitled to make a complaint if the conduct complained of—
- (a) is or has been the subject of legal proceedings before a court or tribunal, or
 - (b) occurred more than 6 years before the commencement of this section, or
 - (c) occurred more than 6 years before the complaint is made, or
 - (d) is of a class prescribed by Council Regulations.

(3) For the purpose of *subsection (2)*, conduct that is of a continuing nature is taken to have occurred at the time when it ceased.

(4) A consumer is not entitled to make a complaint unless the consumer has previously communicated its substance to the regulated financial service provider concerned and has given that financial service provider a reasonable opportunity to deal with it.

(5) A complaint must be in writing. However, the Financial Services Ombudsman may receive a complaint that is not in writing if that Ombudsman considers it appropriate to do so. In that event, the Financial Services Ombudsman shall reduce the complaint to writing as soon as possible after receiving it.

(6) As soon as practicable after receiving a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman shall provide the financial service provider and the Regulatory Authority with a copy of the complaint.

(7) The Financial Services Ombudsman may enter into an arrangement with a person under which that person will receive complaints on behalf of that Ombudsman.

(8) A complaint received by a person under such an arrangement is, for the purposes of this Part, taken to have been received by the Financial Services Ombudsman.

(9) If the Regulatory Authority receives a complaint that appears to be within the jurisdiction of the Financial Services Ombudsman, it shall, without delay, refer the complaint to that Ombudsman for investigation.

Duty of Financial Services Ombudsman to investigate complaints

57BX.—(1) The Financial Services Ombudsman shall investigate a complaint if satisfied that the complaint is within the jurisdiction of the Financial Services Ombudsman.

(2) If, immediately before the commencement of this section, a complaint about the conduct of a regulated financial service provider is being dealt with by mediation, investigation or adjudication by a person under a voluntary scheme for the mediation, investigation or adjudication of complaints about that kind of conduct, the Financial Services Ombudsman may, with the consent of the complainant and if satisfied that the complaint is within that Ombudsman's jurisdiction, continue with the mediation, investigation or adjudication of the complaint as if the complainant had made the complaint under this Part after that commencement.

(3) If, immediately before the commencement of this section, a complaint about the conduct of a regulated financial service provider is being dealt with by mediation, investigation or adjudication by the Regulatory Authority, that Ombudsman may, with the consent of the complainant and if satisfied that the complaint is within that Ombudsman's jurisdiction, continue with the mediation, investigation or adjudication of the complaint as if the complainant had made the complaint under this Part after that commencement.

Financial Services Ombudsman may decline to investigate or to continue to investigate complaint

57BY.—(1) Without limiting *section 57BX*, the Financial Services Ombudsman can decide not to investigate a complaint, or to discontinue an investigation of a complaint, on the ground that—

- (a) the complaint is frivolous or vexatious or was not made in good faith, or
- (b) the subject-matter of the complaint is trivial, or
- (c) the conduct complained of occurred at too remote a time to justify investigation, or
- (d) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or
- (e) the complainant has no interest or an insufficient interest in the conduct complained of.

(2) The Financial Services Ombudsman may make preliminary inquiries for the purpose of deciding whether a complaint should be investigated under this Part and may request the complainant to provide further written particulars of the complaint within a period specified by that Ombudsman.

(3) The Financial Services Ombudsman may decide not to continue to investigate a complaint if the complainant fails within a reasonable period to comply with a request for further written particulars.

(4) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Financial Services Ombudsman shall inform the complainant in writing of the decision and the reasons for it.

Financial Services Ombudsman to attempt to deal with complaint by mediation in first instance

57Z.—(1) On receiving a complaint, the Financial Services Ombudsman shall, as far as possible, try to resolve the complaint by mediation.

(2) Participation in the mediation by the parties to a complaint is voluntary, and a party may withdraw at any time. The Financial Services Ombudsman may abandon an attempt to resolve a complaint by mediation on forming the view that the attempt is not likely to succeed.

(3) If an attempt to resolve a complaint by mediation is unsuccessful, the Financial Services Ombudsman shall—

- (a) deal with the complaint by adjudication, and
- (b) notify the parties accordingly.

Persons entitled to make certain submissions to Financial Services Ombudsman

57CA.—When investigating a complaint, the Financial Services Ombudsman shall provide the parties with an opportunity to make submissions with respect to the conduct complained of.

Financial Services Ombudsman to conduct investigation in private

57CB.—The Financial Services Ombudsman shall ensure that investigations are conducted in private.

Progress report to complainant

57CC.—The Financial Services Ombudsman may, in the course of investigating a complaint, periodically report to the complainant on the progress of the investigation and, in so doing, may make such comments to the complainant on the investigation and its consequences and implications as that Ombudsman thinks fit.

Financial Services Ombudsman can require regulated financial service provider to give information

57CD.—(1) To enable a complaint to be investigated, the Financial Services Ombudsman may require the regulated financial service provider concerned and any associate of that financial service provider—

- (a) to provide information either orally or in writing, or
- (b) to produce any document or other thing, or
- (c) to provide a copy of any document,

that appears to that Ombudsman to be relevant to the investigation.

(2) A requirement under this section may be made orally or be in writing but must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.

(3) The power conferred by *subsection (1)* can be exercised in relation to a regulated financial service provider, or an associate of the financial service provider, irrespective of whether the Financial Services Ombudsman has entered the premises of the financial service provider in accordance with *section 57CE*.

(4) For the purpose of obtaining information relevant to investigating or adjudicating a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman may—

- (a) summon any officer, member, agent or employee of the financial service provider to attend before that Ombudsman, and
- (b) examine on oath any such officer, member, agent or employee in relation to any matter that appears to that Ombudsman to be relevant to the investigation or adjudication.

(5) Without limiting *subsection (4)*, the Financial Services Ombudsman has the same powers that a judge of the High Court has when hearing civil proceedings that are before that Court with respect to the examination of witnesses (including witnesses who are outside the State).

(6) A person who is summoned to appear before the Financial Services Ombudsman under this section is entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.

(7) Information provided by a person in response to a requirement made under *subsection (1)*, or an answer to a question put to a person in the course of an examination conducted under *subsection (4)*, is not admissible as evidence against the person in criminal proceedings, other than proceedings for—

- (a) if the information or answer was provided on oath, perjury, or
- (b) an offence against *section 57CG*.

Financial Services Ombudsman may enter premises of regulated financial service provider or associate of such a provider

57CE.—(1) When investigating a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman may, at any reasonable time—

- (a) enter and inspect any business premises occupied or used by the financial service provider or by any other body or person who appears to that Ombudsman to be associated with that provider, and
- (b) inspect any document or thing in or on the premises.

(2) If a document is kept in a non-legible form, the Financial Services Ombudsman may request the person apparently in charge of the document to reproduce it in a legible form or to give to that Ombudsman such information as that Ombudsman reasonably requires in relation to the document.

Circuit Court may order person to comply with requirements, etc, of Financial Services Ombudsman

57CF.—(1) The Financial Services Ombudsman may apply to the Circuit Court for a compliance order against a person if it appears to that Ombudsman that the person—

- (a) has failed to comply with a requirement made to the person by that Ombudsman under *section 57CD*, or
- (b) has failed to comply with a summons under that section to appear before that Ombudsman for examination, or
- (c) having complied with such a summons, has refused to be examined, or
- (d) has otherwise obstructed that Ombudsman in the exercise of a power conferred by this Part.

(2) If, on hearing an application seeking a compliance order against a person, the Circuit Court is satisfied that the person has failed or refused to do the act in question, the Circuit Court may make an order requiring the person to do that act.

- (3) The Circuit Court may not hear an application for a compliance order unless—
- (a) the person against whom the order is sought appears at the hearing, or
 - (b) the Court is satisfied that that person has been served with a copy of the application.

(4) On the hearing of an application for a compliance order against a person, the Circuit Court shall set aside a requirement made to the person—

- (a) to provide information, or
- (b) to produce a document or other thing, or
- (C) to provide a copy of a document,

if it is of the opinion that the person is entitled to claim legal professional privilege with respect to the provision of the information, the production of the document or thing or the provision of the copy.

Obstruction of Financial Services Ombudsman in the performance or exercise of functions and powers

57CG.—A person who—

- (a) obstructs the Financial Services Ombudsman in the exercise of a power conferred by this Chapter, or
- (b) without reasonable excuse, fails to comply with a requirement or request made by that Ombudsman under this Chapter, or
- (c) in purported compliance with such a requirement or request, gives information that the person knows to be false or misleading, or
- (d) refuses to comply with a summons to attend before, or to be examined on oath by, that Ombudsman,

commits an offence and is liable on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both.

Adjudication of complaint

57CH.—(1) On completing an investigation of a complaint, the Financial Services Ombudsman shall make a finding in writing that the complaint—

- (a) is substantiated, or
- (b) is not substantiated, or
- (c) is partly substantiated in one or more specified respects but not in others.

(2) A complaint may be found to be substantiated or partly substantiated only on one or more of the following grounds:

- (a) the conduct complained of was contrary to law;
- (b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
- (c) although the conduct complained of was in accordance with a law or an established practice, the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
- (d) the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration;
- (e) the conduct complained of was based wholly or partly on a mistake of law or fact;
- (f) an explanation for the conduct complained of was not given when it should have been given;

- (g) the conduct complained of was otherwise improper.
- (3) The Financial Services Ombudsman shall include in a finding—
 - (a) reasons for the finding, and
 - (b) any direction given under *subsection (4)* as a result of the finding.
- (4) If a complaint is found to be wholly or partly substantiated, the Financial Services Ombudsman may direct the financial service provider to do one or more of the following:
 - (a) to review, rectify, mitigate or change the conduct complained of or its consequences;
 - (b) to provide reasons or explanations for that conduct;
 - (c) to change a practice relating to that conduct;
 - (d) to pay an amount of compensation to the complainant for any financial loss or other damage sustained by the complainant as a result of the conduct complained of;
 - (e) to take any other lawful action.
- (5) The Financial Services Ombudsman may not direct the payment of an amount of compensation exceeding an amount (if any) prescribed by Council Regulations.
- (6) A direction requiring a regulated financial service provider to pay an amount of compensation may provide for interest to be paid at a specified rate if the amount is not paid by a date specified in the direction.
- (7) The Financial Services Ombudsman shall give a copy of a finding under this section—
 - (a) to the complainant, and
 - (b) to the regulated financial service provider to which the complaint relates, and
 - (c) to the Council.
- (8) If a statement under this section contains a direction under *subsection (4)*, the financial service provider concerned—
 - (a) shall comply with the direction within such period as is specified in the direction, or within such extended period as the Financial Services Ombudsman allows, and
 - (b) shall, within 14 days after the end of that period or extended period, notify in writing the Financial Services Ombudsman of action taken or proposed to be taken in consequence of the direction.
- (9) Subject to the outcome of any appeal against a finding of the Financial Services Ombudsman in respect of a complaint, the finding is binding on the complainant, the regulated financial service provider concerned and every other person who is a party to the complaint.

Enforcement of Financial Services Ombudsman's directions

57CI.—(1) In this section—

‘direction’ means a direction included in a finding made by the Financial Services Ombudsman under *section 57CH*;

‘enforcement order’ means an order of the Circuit Court to enforce a direction.

(2) If a regulated financial service provider fails to comply with a direction within the period, or by the date, specified in the direction, the Financial Services Ombudsman or the complainant in whose favour the finding was made may apply to the Circuit Court for an enforcement order in respect of the direction.

(3) The Circuit Court may not hear an application for an enforcement order unless—

- (a) the regulated financial service provider concerned appears at the hearing as respondent to the application, or
- (b) if that financial service provider does not appear at the hearing, the Court is satisfied that a copy of the application has been served on that financial service provider.

(4) On hearing an application for an order to enforce the direction, the Circuit Court shall, if satisfied that the direction was one that the Financial Services Ombudsman was empowered to make, make an order requiring the regulated financial service provider concerned to comply with the direction within a period, or by a date, specified in the order.

(5) The Circuit Court may not hear an application for an enforcement order in respect of a direction if the regulated financial service provider concerned has appealed against the finding in which the direction is included and either—

- (a) the finding or direction has not been affirmed (with or without modification), or
- (b) that financial service provider has not withdrawn the appeal.

(6) If, on the hearing of an application for an enforcement order, the Circuit Court is satisfied that, because of the lapse of time, it would not be possible for the regulated financial service provider concerned to comply with such an order, the Court shall make an order providing the complainant with such redress as it considers appropriate in the circumstances.

(7) If an enforcement order requires a regulated financial service provider to pay an amount of money, the Circuit Court may direct that financial service provider to pay to the complainant concerned interest on the amount for all or a specified part of the period—

- (a) beginning 4 weeks after the date on which the direction was given to that financial service provider, and
- (b) ending with the date of the order.

(8) The interest payable on such an amount is to be at the rate referred to in section 22 of the Courts Act 1981.

CHAPTER 6

References and Appeals under this Part to the High Court

Financial Services Ombudsman may refer question of law to High Court

57CJ.—(1) When dealing with a complaint, the Financial Services Ombudsman may, on that Ombudsman's own initiative or at the request of the complainant or the regulated financial service provider concerned, refer for the opinion of the High Court a question of law arising in relation to the investigation or adjudication of the complaint.

(2) The High Court has jurisdiction to hear and determine any question of law referred to it under this section.

(3) If a question of law has been referred to the High Court under this section, the Financial Services Ombudsman may not—

- (a) make a finding to which the question is relevant while the reference is pending, or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the High Court on the question.

Right of appeal to High Court against Financial Services Ombudsman's finding

57CK.—(1) If dissatisfied with a finding of the Financial Services Ombudsman, the complainant or the regulated financial service provider concerned may appeal to the High Court against the finding.

(2) The Financial Services Ombudsman can be made a party to an appeal under this section.

(3) An appeal under this section must be made—

- (a) within such period and in such manner as is prescribed by rules of court of the High Court, or
- (b) within such further period as that Court may allow.

Orders on appeal to the High Court relating to Financial Services Ombudsman's finding

57CL.—(1) The High Court is to hear and determine an appeal made under *section 57CK* and may make such orders as it thinks appropriate in light of its determination.

(2) The orders that may be made by the High Court on the hearing of such an appeal include (but are not limited to) the following:

- (a) an order affirming the finding of the Financial Services Ombudsman, with or without modification;
- (b) an order setting aside that finding or any direction included in it;
- (c) an order remitting that finding or any such direction to that Ombudsman for

review.

(3) If the High Court makes an order remitting to the Financial Services Ombudsman a finding or direction of that Ombudsman for review, that Ombudsman is required to review the finding or direction in accordance with the directions of the Court.

(4) The determination of the High Court on the hearing of such an appeal is final, except that a party to the appeal may apply to the Supreme Court to review the determination on a question of a law (but only with the leave of either of those Courts).

Appeal stays the finding of the Financial Services Ombudsman

57CM.—A finding of the Financial Services Ombudsman does not take effect, and may not be implemented, while an appeal under *section 57CK* is pending in relation to the finding.

CHAPTER 7

Supplementary Provisions

Protection and other provisions relating to disclosures of information

57CN.—(1) A provision of any Act or law that prohibits or restricts the disclosure of information does not—

- (a) operate to prevent or restrict the disclosure of information, or
- (b) affect a duty to disclose information,

under this Part.

(2) A person who discloses information under or for the purpose of this Part does not incur liability for defamation or other civil liability only because of the disclosure.

(3) Nothing in this Part affects an obligation or power to provide information apart from this Part.

Power of Court to grant injunctions in certain cases

57CO.—(1) The High Court may, on an application made by the Financial Services Ombudsman, grant an injunction restraining conduct in which a regulated financial service provider is engaging or in which a regulated financial service provider appears likely to engage, if the conduct is conduct that is being investigated or is proposed to be investigated under this Chapter.

(2) The High Court may not grant an application under *subsection (1)* unless of the opinion that the conduct sought to be restrained is likely to prejudice or negate the effect or implementation of a decision that the Financial Services Ombudsman might make under this Chapter if that Ombudsman were to find the complaint to which the conduct relates is wholly or partly substantiated.

(3) The High Court may not require the Financial Services Ombudsman to give any undertaking as to damages as a condition for the granting of an injunction in consequence of an application referred to in *subsection (1)*.

Financial Services Ombudsman and Council to co-operate with Bank and others

57CP.—(1) The Council and the Financial Services Ombudsman shall co-operate with the Bank (and, in particular, the Consumer Director) with a view to ensuring that the provisions of this Part operate in a way that contributes to promoting the best interests of users of financial services.

(2) The Council and the Financial Services Ombudsman may make recommendations to the Regulatory Authority, the Consumer Director or the Registrar of Credit Unions with respect to measures that that Authority, the Consumer Director or the Registrar of Credit Unions might take so as—

- (a) to effectively deal with persistent patterns of complaints made against specified regulated financial service providers or against a specified class of those financial service providers, or
- (b) to improve the way in which regulated financial service providers deal with complaints that are made against them, or
- (c) to effectively deal with any other matter relating to promoting the interests of consumers of financial services.

CHAPTER 8

Reciprocal arrangements with corresponding agencies of other EEA countries

Definitions (Chapter 8)

57CQ.—(1) In this Chapter—

‘complaint’ includes a complaint within the meaning of the EEA Memorandum of Understanding;

‘EEA Memorandum of Understanding’ means the Memorandum of Understanding on a Cross-border Out-of-court Complaints Network for Financial Services in the European Economic Area or, if the memorandum is amended or is replaced by another memorandum, means the memorandum as so amended or that other memorandum.

Financial Services Ombudsman may subscribe to EEA Memorandum of Understanding

57CR.—The Financial Services Ombudsman may, with the approval of the Council, subscribe to the EEA Memorandum of Understanding.

Financial Services Ombudsman may refer complaints to other EEA dispute settlement body

57CS.—If the Financial Services Ombudsman has subscribed to the EEA Memorandum of Understanding, that Ombudsman may refer a complaint made to that Ombudsman to another EEA dispute settlement body in accordance with the terms of that Memorandum.

Financial Services Ombudsman may mediate, investigate and adjudicate complaints referred by other EEA dispute settlement bodies

57T.—If the Financial Services Ombudsman has subscribed to the EEA Memorandum of Understanding, that Ombudsman may mediate, investigate and adjudicate on any complaint referred to that Ombudsman by another EEA dispute settlement body in accordance with the terms of that Memorandum.”.

New Part VIIC inserted into the Principal Act

9.—The Principal Act is amended by inserting the following Part after Part VIIB (as inserted by section 8 of this Act):

“PART VIIC

CONSULTATIVE PANELS

CHAPTER 1

General

Interpretation: Part VIIC

57DA.—In this Part—

‘advisory group’ means an advisory group established under *section 57DK*;

‘Consultative Consumer Panel’ means the Financial Services Consumer Consultative Panel established under *section 57DB*;

‘Consultative Industry Panel’ means the Financial Services Consultative Industry Panel established under *section 57DB*;

‘Consultative Panel’ means the Consultative Consumer Panel or the Consultative Industry Panel;

‘legislative document’ means a regulation, rule, code of conduct or other document that has a legislative effect;

‘Regulatory Authority’ includes any member, officer of the Regulatory Authority or employee of the Bank to whom a function or power of that Authority is delegated.

Establishment and membership of Consultative Panels

57DB.—(1) The Regulatory Authority shall establish and maintain two consultative panels.

(2) One of the panels is to be called the ‘Financial Services Consumer Consultative Panel’ and the other is to be called the ‘Financial Services Industry Consultative Panel’.

(3) As soon as practicable after establishing a Consultative Panel, the Regulatory Authority shall publish in the *Iris Oifigiúil* a notice to the effect that the Panel has been established and the date on which the establishment took effect.

CHAPTER 2

Consultative Consumer Panel

Membership of Consultative Consumer Panel

57DC.—(1) The Consultative Consumer Panel is to consist of not fewer than 5, and not more than 20, members.

(2) The members of the Consultative Consumer Panel are to be appointed by the Minister for Finance after consulting the Minister for Enterprise, Trade and Employment and those organisations that, in the opinion of the Minister for Finance, represent the interests of consumers.

(3) In appointing persons as members to the Consultative Consumer Panel, the Minister shall ensure as far as possible that those persons have knowledge or experience of or as consumers.

(4) A person is not eligible to be appointed as a member of the Consultative Consumer Panel if the person—

- (a) is a member of either House of the Oireachtas or is, with the person’s consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann, or
- (b) is a member of the European Parliament or is, with the person’s consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or
- (c) is a member of a local authority or is, with the person’s consent, nominated as a candidate for election as such a member.

(5) A member of the Consultative Consumer Panel holds office for such period, not exceeding 5 years, as is specified in the member’s document of appointment, unless the member ceases to hold office under *Schedule 8*.

(6) A member is eligible for reappointment at the end of a period of office.

(7) The Minister shall appoint one of the members of the Consultative Consumer Panel to be chairperson of the Panel.

Functions of Consultative Consumer Panel

57DD.—The functions of the Consumer Panel are as follows:

- (a) to monitor the performance by the Regulatory Authority of its functions and responsibilities under this Act;
- (b) to monitor the activities of the Consumer Director;
- (c) to monitor the activities of the Registrar of Credit Unions, so far as those activities affect consumers;
- (d) to provide the Regulatory Authority with comments with respect to the performance of its functions and responsibilities;
- (e) to provide the Regulatory Authority with suggestions for initiatives that, in the Panel's opinion, that Authority should take with respect to the performance of its functions and responsibilities;
- (f) when the Regulatory Authority so requests, to comment on legislative documents that that Authority proposes to make or issue;
- (g) to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year.

Regulatory Authority to provide sufficient resources to enable Consultative Consumer Panel to function

57DE.—(1) The Regulatory Authority shall provide the Consultative Consumer Panel with such administrative services (including technical and legal advice), and such funds, as that Authority believes are necessary to enable that Panel to perform its functions.

(2) The Regulatory Authority shall arrange for an officer or employee of the Bank nominated by that Authority to attend a meeting of the Consultative Consumer Panel whenever the chairperson of the Panel asks that Authority to do so.

CHAPTER 3

Consultative Industry Panel

Membership of Consultative Industry Panel

57DF.—(1) The Consultative Industry Panel is to consist of not fewer than 5, and not more than 20, members.

(2) The members of the Consultative Industry Panel are to be appointed by the Minister for Finance after consulting the Minister for Enterprise, Trade and Employment and those organisations that, in the opinion of the Minister for Finance, represent the interests of financial service providers.

(3) In appointing persons as members to the Consultative Industry Panel, the Minister shall ensure as far as possible that those persons have knowledge or experience of the financial services industry.

(4) A person is not eligible to be appointed as a member of the Consultative Industry Panel if the person—

- (a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann, or
- (b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or
- (c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member.

(5) A member of the Consultative Industry Panel holds office for such period, not exceeding 5 years, as is specified in the member's document of appointment, unless the member ceases to hold office under *Schedule 8*.

(6) A member of the Consultative Industry Panel is eligible for reappointment at the end of a period of office.

(7) The Minister shall appoint one of the members of the Consultative Industry Panel to be chairperson of the Panel.

Functions of Consultative Industry Panel

57DG.—The functions of the Consultative Industry Panel are as follows:

- (a) when the Regulatory Authority so requests, to provide that authority with comments on legislative documents that that Authority proposes to make or issue;
- (b) to provide the Regulatory Authority with comments on levies and fees that that Authority proposes to prescribe under *section 33J* or *33K*;
- (c) to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year;
- (d) to provide the Regulatory Authority with comments on the impact that the conditions and restrictions imposed by that Authority on financial service providers have on the competitiveness of those providers.

Regulatory Authority to provide sufficient resources to enable Consultative Industry Panel to function

57DH.—(1) The Regulatory Authority shall provide the Consultative Industry Panel with such administrative services (including technical and legal advice) as that Authority believes are necessary to enable that Panel to perform its functions.

(2) The Regulatory Authority shall arrange for an officer or employee of the Bank nominated by that Authority to attend a meeting of the Consultative Industry Panel whenever the chairperson of the Panel asks that Authority to do so.

CHAPTER 4

Provisions applying to both Consultative Panels

Schedule 8 to have effect with respect to Consultative Panels

57DI.—*Schedule 8* has effect with respect to a Consultative Panel.

Consultative Panel to prepare annual report

57DJ.—(1) Within 3 months after the end of each financial year, or within such extended period as the Regulatory Authority allows, each Consultative Panel shall prepare an annual report that provides details of the Panel's activities during that year.

(2) The Regulatory Authority shall arrange for publication of the annual report of each Panel.

(3) The Regulatory Authority shall also arrange for publication of—

- (a) comments made by a Consultative Panel to that Authority in accordance with a provision of this Part, and
- (b) any statement of reasons given by that Authority in response to any such comments, and
- (c) reports of meetings of the Consultative Panels and advisory groups, and
- (d) any other report produced or commissioned by a Consultative Panel or an advisory group, and
- (e) the rules of procedure of the Consultative Panels.

Responsibilities of Regulatory Authority and Minister with respect to Consultative Panels

57DK.—(1) Before making or issuing a legislative document, the Regulatory Authority shall consult each Consultative Panel, unless that Authority believes that the document must be made or issued without delay. In that case, the Regulatory Authority shall consult each of the Panels as soon as possible after the document is made or issued.

(2) In making or issuing a legislative document, the Regulatory Authority shall give effect to the comments (if any) provided by a Consultative Panel on any aspect of the document, unless it is satisfied that there are good reasons for not doing so. In that case, the Regulatory Authority shall provide the Panel with a statement of those reasons.

(3) The Minister shall consult each Consultative Panel before approving the Regulatory Authority's draft estimate of income and expenditure for a financial year.

Establishment and operation of advisory groups

57DL.—(1) A Consultative Panel, or the Consultative Panels jointly, may, with the consent of the Regulatory Authority, establish advisory groups to advise the Panel or Panels on any matter relating to financial services or providers of those services on which the Panel or Panels ask for advice.

(2) An advisory group is to consist of at least one member of the Panel or Panels that established it.

(3) As soon as practicable after being asked by a Consultative Panel, or by the Consultative Panels jointly, to provide advice on a matter, an advisory group shall provide the advice to the Panel or Panels that asked for the advice.

(4) The Regulatory Authority may consult an advisory group on a matter relating to financial services or to providers of those services directly without reference to—

(a) the Consultative Panel that established it, or

(b) if the group was established by the Consultative Panels jointly, those Panels.

(5) An advisory group may decide its own procedure for convening meetings of the group and for the conduct of business at those meetings.

(6) Within 3 months after the end of each financial year, an advisory group shall provide a report of its activities during that year to—

(a) the Consultative Panel that established it, or

(b) if the group was established by the Consultative Panels jointly, those Panels.

The report required under this subsection is in addition to any report that the group is required to provide under *subsection (3)*.

(7) An advisory group continues in existence until dissolved—

(a) by the Consultative Panel that established it, or

(b) if the group was established by the Consultative Panels jointly, by those Panels jointly.

(8) The fact that an advisory group has been dissolved under *subsection (8)* does not prevent another advisory group or other advisory groups from being established under this section.

Chairperson of Consultative Panel to attend meetings of relevant Oireachtas Joint Committee when required

57DM.—(1) The chairperson of a Consultative Panel shall attend a meeting of the relevant Joint Committee of the Oireachtas whenever that Committee requires that chairperson to do so.

(2) When attending a meeting of the relevant Joint Committee of the Oireachtas, the chairperson of a Consultative Panel shall provide that Committee with such information as it reasonably requires about matters with which the Panel is or has been concerned.

(3) In this section, ‘relevant Joint Committee of the Oireachtas’ means a Joint Committee of the Oireachtas to which the Oireachtas has assigned the role of examining matters relating to the operation of the Bank or the Regulatory Authority.”.

Amendment of section 61E of Principal Act

10.—Section 61E of the Principal Act (as inserted by section 30 of the Central Bank and Financial Services Authority of Ireland (No.2) Act 2003) is amended—

(a) by inserting after subsection (1)(g)—

“(ga) the Financial Services Ombudsman;”.

(b) in paragraph (h), by substituting “section;” for “section.”, and

(c) by inserting the following paragraph after paragraph (j):

“(i) any body established by or under an enactment for the purpose of supervising the conduct of auditors.”.

Insertion into Principal Act of new Schedule 4A

11.—The Principal Act is amended by inserting the following Schedule after Schedule 4 (as amended by section 33 of the Central Bank and Financial Services Authority of Ireland Act 2003):

“SCHEDULE 4A

Section 33AO(5).

PROVISIONS APPLICABLE TO MEMBERS OF THE REGULATORY AUTHORITY SANCTIONS PANEL

Acting convenor

1.—(1) If the convenor is absent from duty (whether because of illness or any other cause), the deputy convenor is to be acting convenor.

(2) When acting as the convenor, the deputy convenor has the functions and powers of the convenor and anything done by the deputy convenor in the performance or exercise of those functions and powers has effect as if the convenor had done the thing.

(3) In this paragraph, absence from duty includes a vacancy in the relevant office.

Terms of appointment of members

2.—(1) Subject to this Schedule, a member of the Panel holds office for 5 years.

(2) Such a member is eligible for reappointment at the end of a term of appointment or reappointment.

Fees and other amounts payable to members of the Panel

3.—(1) The Regulatory Authority may pay to a member of the Panel such fees as it determines from time to time.

(2) The Regulatory Authority may also reimburse a member of the Panel for expenses properly incurred in the performance of the member's functions.

Vacancy in office of member of Panel

4.—(1) A person ceases to be a member of the Panel if the person—

- (a) dies, or
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by notice in writing given to the Regulatory Authority, or
- (d) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas or is nominated as a member of the Seanad Éireann, or
- (e) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or
- (f) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or
- (g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or
- (h) becomes physically or mentally incapable of performing the functions of a member of the Panel, or
- (i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or
- (j) is removed from office by a resolution passed in accordance with *subparagraph (2)*.

(2) A member of the Panel can be removed from office only by a resolution of the Regulatory Authority on the ground of proven misbehaviour or incapacity.

Filling vacancy in office of member

5.—(1) If the office of a member of the Panel becomes vacant, the Regulatory Authority is required to arrange for a suitably qualified person to be appointed to fill the vacancy in accordance with this Act within 60 days after the date on which the vacancy occurred.

(2) *Subparagraph (1)* does not apply if the term of office of the member concerned was due to expire within 60 days after the vacancy occurred.

Vacancy in office of convenor or deputy convenor

6.—A person ceases to be convenor or deputy convenor if the person ceases to be a member of the Panel.

Filling vacancy in office of convenor or deputy convenor

7.—As soon as practicable after the office of convenor or deputy convenor becomes vacant, the Regulatory Authority is required to appoint a member of the Panel to fill the vacancy.

Former member whose term expires may complete unfinished matters

8.—(1) Even though a person's term of office as a member of the Panel has come to an end, the person may finish and continue to participate in any inquiry in which the person was participating before the end of that term.

(2) While finishing and continuing to participate in an inquiry referred in *subparagraph (1)*, the person is taken to have and may exercise all the rights and functions of a member of the Panel that the person had immediately before the end of the person's term of office.

Disclosure of members' pecuniary and other interests

9.—(1) If a person is, or is to be, a member of the Panel as constituted for the purposes of an inquiry and the person has or acquires an interest (pecuniary or otherwise) that could conflict with the proper performance of the person's functions in relation to the inquiry, the person—

- (a) shall disclose the nature of the interest to the parties to the inquiry, and
- (b) may not, without the consent of all of the parties, take part in the inquiry, or exercise any powers in relation to the making by the Panel of any decision in respect of any allegation to which the inquiry relates.

(2) If the convenor becomes aware that a person who is, or is to be, a member of the Panel as constituted for the purposes of an inquiry and that the person has in relation to the inquiry an interest referred to in *subparagraph (1)*, the convenor shall—

- (a) if the convenor considers that the person should not take part, or should not continue to take part, in the proceedings—give a direction to the person accordingly, or
- (b) in any other case—arrange for the person's interest to be disclosed to the parties to the proceedings where the interest has not already been disclosed under *subparagraph (1)*.

(3) For the purposes of this paragraph, the expertise or experience of a member of the Panel in relation to a class of matters in relation to which the Panel has jurisdiction does not constitute an interest that could conflict with the proper performance of the functions of the member.

(4) A failure to comply with this paragraph does not of itself affect the validity of any decision made by the Panel.”.

Insertion into the Principal Act of new Schedules 6 and 7

12.—The Principal Act is amended by inserting the following Schedules after Schedule 5 (as inserted by section 33 of the Central Bank and Financial Services Authority of Ireland Act 2003):

“SCHEDULE 6

Section [57BA]

FINANCIAL SERVICES OMBUDSMAN COUNCIL

Secretary to the Council

1.—The Chairperson shall, with the agreement of the Financial Services Ombudsman, designate a member of the Bureau staff to be Secretary to the Council.

Provision of services to the Council

2.—Whenever the Chairperson requests, the Financial Services Ombudsman shall, so far as it is possible to do so, arrange for the Council to be provided with such administrative services (including technical and legal advice) as the Council requires to enable it to perform its functions.

Members of Council entitled to certain fees and allowances

3.— Members of the Council are entitled to be paid such fees and travelling and subsistence allowances as the Minister approves. Those fees and allowances are payable out of the funds of the Bureau.

Termination of membership of Council

4.— (1) A person ceases to be a member if the person—

- (a) dies, or
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by notice in writing addressed to the Minister, or
- (d) has, without the permission of the other members, been absent from meetings of the Council for a consecutive period of 6 months, or

- (e) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas or is nominated as a member of Seanad Éireann, or
 - (f) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or
 - (g) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or
 - (h) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or
 - (i) becomes physically or mentally incapable of performing the duties of a member, or
 - (j) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or
 - (k) is removed from office under *subsection (3)*.
- (3) The Minister may remove an appointed member from office—
- (a) for proven misconduct or incompetence, or
 - (b) in order to enable the Council to function effectively.

Filling vacancy in office of member

5.—(1) If the office of a member becomes vacant, the Minister is required to arrange for a suitably qualified person to be appointed to fill the vacancy in accordance with this Act within 60 days after the date on which the vacancy occurred.

(2) *Subparagraph (1)* does not apply if the term of office of the member concerned was due to expire within 60 days after the vacancy occurred.

Procedure for convening and holding meetings of Council

6.—The procedure for convening meetings of the Council and for the conduct of business at those meetings is, subject to this Schedule, to be as determined by the Council. The Council may determine that procedure by means of rules or standing orders or by any other means.

Quorums at meetings of the Council

7.—The quorum for a meeting of the Council is a majority of the members of the Council.

Who is to preside at meetings of the Council

8.—A meeting of the Council is to be presided over by—

- (a) the Chairperson, or
- (b) in the absence of the Chairperson, a member elected by the members of the

Council present at the meeting.

Voting at Council meetings

9.—(1) A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

(2) If the votes are equal on a motion put at a meeting of the Council, the person who is presiding at the meeting has a casting as well as a deliberative vote.

Transaction of business otherwise than at ordinary meetings

10.—(1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all its existing members. A resolution approved in writing by a majority of those members is taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which its members (or some of its members) participate by telephone, closed circuit television or other means, but only if any member who speaks on a matter being considered by the meeting can be heard by the other members. For the purposes of —

(a) the approval of a resolution under *subparagraph (1)*, or

(b) a meeting held in accordance with *subparagraph (2)*,

the members of the Council have the same voting rights as they have at an ordinary meeting of the Council.

(3) Papers may be circulated among Council members for the purposes of *subparagraph (1)* by the electronic transmission of the information in the papers concerned.

SCHEDULE 7

Section [57BI, 57BK, 57M]

FINANCIAL SERVICES OMBUDSMAN, DEPUTY FINANCIAL SERVICES OMBUDSMEN AND OTHER BUREAU STAFF MEMBERS

Vacation of office of Financial Services Ombudsman and Deputy Financial Services Ombudsmen

1.—(1) A person ceases to hold office as the Financial Services Ombudsman or as a Deputy Services Ombudsman if the person—

(a) dies, or

(b) completes a term of office and is not reappointed, or

(c) resigns the office by notice in writing addressed to the Council, or

(d) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas or is nominated as a member of Seanad Éireann, or

- (e) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or
- (f) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or
- (g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or
- (h) becomes physically or mentally incapable of performing the duties of Financial Services Ombudsman or Deputy Financial Services Ombudsman, or
- (i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence
- (j) is removed from office under *subsection (2)*.

(2) The Council may remove the Financial Services Ombudsman or a Deputy Financial Services Ombudsman from office—

- (a) for proven misconduct or incompetence, or
- (b) if the removal appears to the Council to be necessary for the effective performance of the functions of the office concerned.

Remuneration and conditions of service of Financial Services Ombudsman and Deputy Financial Services Ombudsman

2.—The Financial Services Ombudsman and each Deputy Financial Services Ombudsman is entitled to be paid such remuneration and allowances (including travel and subsistence allowances) as the Council decides.

Financial Services Ombudsman and Deputy Financial Services Ombudsman not to engage in paid employment without approval

3.—Neither the Financial Services Ombudsman nor the Deputy Financial Services Ombudsman may engage in paid employment outside the duties of the office unless the Council approves the employment.

Superannuation schemes for the benefit of staff of the Bureau

4.—(1) In this paragraph, 'Bureau staff member' includes the Financial Services Ombudsman and any Deputy Financial Services Ombudsman.

(2) This paragraph applies to and in respect of Bureau staff members and former Bureau staff members.

(3) The Council shall establish and operate a superannuation scheme under which superannuation benefits are payable on the retirement or death of a person to whom this

paragraph applies. However, such a scheme does not take effect until it has been approved by the Minister.

(4) A superannuation scheme established under this paragraph is to be embodied in rules made by the Council. Those rules must provide for the operation of the scheme and, in particular, for—

- (a) the making of contributions (including contributions from funds of the Bureau) towards the superannuation benefits to be paid under the scheme, and
- (b) the payment of those benefits to or in respect of persons to whom this paragraph applies.

(5) The rules may provide for different conditions to apply to or in respect of persons to whom this paragraph applies by reference to differing circumstances applying to or in respect of those persons.

(6) The Council may from time to time amend the rules or replace the rules with new rules.

(7) As soon as practicable after establishing a superannuation scheme under this paragraph, the Council shall establish a trust fund for holding contributions made to the scheme or to each of those schemes and for the payment of superannuation benefits under the scheme or schemes.

(8) As soon as practicable after establishing a trust fund under this paragraph, the Council shall appoint two or more trustees to hold and operate the trust fund.

(9) The trustees of the trust fund relating to a superannuation scheme established under this paragraph shall, from that fund, pay to or in respect of persons to whom this paragraph applies on their retirement or death the appropriate superannuation benefits under the scheme.

(10) The Council shall decide any dispute that arises out of the claim of any person to, or the amount of, any superannuation benefit payable under a scheme established under this paragraph. The Council's decision with respect to the dispute is final.

(11) The Council shall arrange for all rules made under this paragraph to be laid before each House of the Oireachtas as soon as practicable after they are made. If either House, within the 21 days on which it has sat after the rules are laid before it, passes a resolution annulling the rules, the rules are accordingly annulled, but without affecting the validity of anything previously done under them.

(12) In this section—

‘retirement’, in relation to a person holding office as the Financial Services Ombudsman or a Deputy Financial Services Ombudsman, includes not being reappointed after the end of the person's term of office;

‘superannuation benefit’ means a superannuation benefit payable to a person to whom this section applies or, where such a person has died, to the spouse or a child of that person,

and includes a pension, a retirement allowance and a gratuity.”.

Insertion into Principal Act of new Schedule 8

13.—The Principal Act is amended by inserting the following Schedule after Schedule 7 (as inserted by section 12 of this Act):

“SCHEDULE [8]

Section [57DI]

PROVISIONS APPLYING TO BOTH CONSULTATIVE PANELS

Members of Consultative Panel entitled to expense allowances

1.—A member of a Consultative Panel is entitled to be paid from the funds of the Regulatory Authority such attendance, travelling and subsistence allowances as that Authority determines.

Termination of membership of Consultative Panel

- 2.—(1) A person ceases to be a member of a Consultative Panel if the person—
- (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns from membership by notice in writing addressed to the Minister, or
 - (d) is, with the person’s consent, nominated as a candidate for election as a member of either House of the Oireachtas or is nominated as a member of Seanad Éireann, or
 - (e) is, with the person’s consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or
 - (f) is, with the person’s consent, nominated as a candidate for election as a member of a local authority, or
 - (g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person’s creditors, or
 - (h) becomes physically or mentally incapable of performing the duties of a member, or
 - (i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or
 - (j) is removed from membership under *subsection (3)*.
-

(2) A member's resignation does not take effect until the end of the meeting of the relevant Consultative Panel next held after the notice of resignation was given to the Minister.

(3) The Minister may, after consulting the Regulatory Authority, remove a person from membership of a Consultative Panel for a specified reason.

(4) If a person is removed from membership of a Consultative Panel, the Minister is required to give the person a statement in writing specifying the reason.

Meetings of Consultative Panels

3.—A Consultative Panel may determine its own procedure for convening meetings of the Panel and for the conduct of business at those meetings. The Panel may determine that procedure by means of rules or standing orders or by any other means.”.

PART 3

AMENDMENT OF CENTRAL BANK ACT 1997

Amendment of section 2 of Central Bank Act 1997 (Interpretation)

14.—(1) Section 2(1) of the Central Bank Act 1997 is amended—

(a) by inserting the following definitions after the definition of “Bank”:

“‘Central Bank Acts’ means the Central Bank Act 1942 as amended from time to time, and includes all Acts that are to be construed together with that Act as one Act;

‘contravene’ includes fail to comply;”;

(b) by inserting the following definition after the definition of “credit institution”:

“‘EEA country’ means a country that is a member of the European Economic Area;”;

(c) by inserting the following definitions after the definition of “prescribed”:

“‘publication’ includes publication on an Internet website;

‘publish’ includes publish by means of the Internet;

‘records’ includes books and all other kinds of documents, and also includes—

(a) information kept in a non-legible form (whether electronically or otherwise) that is capable of being reproduced in a legible form, and

(b) the means (if any) by which the information is capable of being reproduced;

‘regulated financial service provider’ has the same meaning as in section 2(1) of the Act of 1942;”.

(d) by deleting “, 1942 to 1997” from paragraph (a) of the definition of “statutory functions”.

(2) Section 2(2) of the Central Bank Act 1997 is amended by deleting “, 1942 to 1997”.

Amendment of section 19 of Central Bank Act 1997 (Prohibition of revocation of certain payments)

15.—Section 19 of the Central Bank Act 1997 is amended by substituting “Bank” for “Central Bank”, wherever occurring.

Substitution of Part IV of the Central Bank Act 1997

16.—The Central Bank Act 1997 is amended by substituting the following Part for Part IV:

“PART IV

FUNCTIONS OF BANK WITH RESPECT TO REGULATED FINANCIAL SERVICE PROVIDERS

CHAPTER 1

Introductory

Interpretation (Part IV)

24.—(1) In this Part—

‘affiliate’, in relation to an auditor, means a firm or body corporate specified by *subsection (2)* as being an affiliate of the auditor;

‘audit work’, in relation to a regulated financial service provider, includes all work of an accounting, financial or advisory nature that an auditor does for the financial service provider as well as all work that the auditor does for the financial service provider in the auditor’s capacity as such;

‘company’ has the same meaning as in section 2(1) of the Companies Act 1963;

‘guideline’ means a guideline issued under *section 27A* or, if such a guideline is amended, means the guideline as amended;

‘public authority’ means a body (whether corporate or incorporate) established or constituted by or under an Act that performs one or more public functions;

‘relevant statutory obligations’, in relation to a regulated financial service provider, means the service provider’s obligations under—

- (a) all designated enactments and all designated statutory instruments that apply to it, and
- (b) all codes, guidelines and notices issued by the Bank that apply to it, and
- (c) all other enactments and statutory instruments with which it must comply.

(2) For the purposes of this Part, each of the following is an affiliate of an auditor in a financial year:

- (a) in the case of an auditor that is a firm—

- (i) any other firm that had, at any time in the financial year, a partner in common with the auditor;
 - (ii) any body corporate in which the auditor, any firm mentioned in *subparagraph (i)* or *(iv)* or any body corporate mentioned in *subparagraph (iii)* or *(iv)* was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting;
 - (iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in *subparagraph (ii)*;
 - (iv) any other firm, or body corporate, that because of the use of a common name or corporate identity or the sharing of common professional services could reasonably be considered to be associated with the auditor;
- (b) in the case of an auditor who is a natural person—
- (i) any partnership in which the auditor was, at any time in the financial year, a partner;
 - (ii) any body corporate in which the auditor, any partnership mentioned in *subparagraph (i)* or any body corporate mentioned in *subparagraph (iii)* was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting;
 - (iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in *subparagraph (ii)*.

(3) For the purposes of this Part, a director of a regulated financial service provider that is a body corporate is taken to be concerned in the management of the financial service provider even though the director is not involved in its day to day management.

CHAPTER 2

Compliance and related statements

Obligation of regulated service provider to provide compliance statement when required to do so by the Bank

25.—(1) The Bank may, on its own initiative, serve on a regulated financial service provider a notice requiring the service provider to comply with this section.

(2) The Bank may also serve such a notice at the request of another public authority only if it is of the opinion that it would be in the public interest to do so.

(3) A notice must specify a reasonable period within which the requirement is to be complied with and, if the notice is served at the request of another public authority, it must specify the name and address of that authority.

(4) A regulated financial service provider on whom a notice is served shall provide the Bank with a compliance statement within the required period.

(5) If the compliance statement is provided at the request of another public authority, the financial service provider concerned shall, also within the required period, provide the public authority with a copy of the statement.

(6) A compliance statement must specify whether the regulated financial service provider concerned has, during the compliance period specified in the notice, complied with its relevant statutory obligations, or with such of them as are specified in the notice.

(7) A compliance statement must also comply with the guidelines (if any) from time to time issued under *section 27A(1)*.

(8) In this section—

‘notice’ means a notice in writing served under this section;

‘required period’, in relation to a notice served on a regulated financial service provider, means the period specified in the notice within which the service provider must comply with the notice or, if the Bank extends that period, that extended period.

Compliance statement to be accompanied by auditor’s report if required

26.—(1) If a notice served under *section 25* so requires, the financial service provider concerned shall request the service provider’s auditor to prepare a report about the relevant compliance statement.

(2) As soon as practicable after receiving a request in accordance with *subsection (1)*, the auditor shall prepare a report about the relevant compliance statement and, on completion, deliver the report to the financial service provider concerned.

(3) Such a report must—

(a) state whether the relevant compliance statement is, in the auditor’s opinion, fair and reasonable in the light of the information obtainable by the auditor, or by an affiliate of the auditor, in the course of undertaking audit work for the service provider, and

(b) if the auditor is of the opinion that the compliance statement is not fair and reasonable, specify the reasons why, in the auditor’s opinion, that statement is not fair and reasonable.

(4) As soon as practicable after receiving a report prepared in accordance with this section, the financial service provider concerned shall—

(a) attach the report to the compliance statement, or

(b) if that statement has already been delivered to the Bank, deliver the report to the Bank, and if another public authority requested the compliance statement, also deliver a copy of the report to the public authority.

(5) If a report prepared in accordance with this section relates to a financial service provider that is a company, the auditor shall include a copy of the report in the auditor's report on the company's accounts that are required to be laid before the company in general meeting.

Offences under section 25 or 26

27.—(1) A regulated financial service provider who fails to comply with a requirement of *section 25* or *26* commits an offence.

(2) A regulated financial service provider who, having been convicted of an offence of failing to comply with a requirement of *section 25* or *26*, continues to fail to comply with the requirement commits a further offence on each day or part of a day during which the failure continues after that conviction and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

(3) If a regulated financial service provider that is a body corporate commits an offence under *subsection (1)*, each person who, at the time when the offence is found to have been committed, was concerned in the management of the body commits an offence, unless the person establishes that—

- (a) the body committed the offence without the person's knowledge, or
- (b) although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

(4) A person may be charged with having committed an offence under *subsection (3)* even if the financial service provider concerned is not charged with having committed an offence under *subsection (1)* in relation to the same matter.

(5) A financial service provider or other person who is convicted of an offence under this section is—

- (a) if tried summarily, liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, liable on conviction to a fine not exceeding €75,000.

Bank may issue guidelines

27A.—(1) The Bank may from time to time issue guidelines with which a compliance statement must comply.

(2) The Bank may also from time to time issue guidelines specifying the manner in which the persons concerned in the management of regulated financial service providers, or of regulated financial service providers of a specified class, are required to exercise control over those service providers so as to ensure that those service providers comply with their

obligations under the designated enactments and designated statutory instruments that apply to them.

(3) Whenever the Bank issues guidelines under this section, or amends or revokes those guidelines, the Bank must publish in the *Iris Oifigiúil* a notice—

- (a) stating that the guidelines have been issued, or have been amended or revoked, and
- (b) specifying a place or places where copies of the guidelines, or the amendment or revocation, may be obtained.

(4) The Bank shall publish guidelines issued under this section, or any amendment or revocation of those guidelines, in a publication chosen by the Bank.

(5) Guidelines issued under this section take effect on the date on which the notice of their issue is published in the *Iris Oifigiúil* or on such later date as is specified in the publication.

(6) The Bank may amend or revoke guidelines issued under this section.

(7) An amendment or revocation of a guideline issued under this section takes effect on the date on which notice of the amendment or revocation is published in the *Iris Oifigiúil* or on such later date as is specified in the notice.

(8) All courts and tribunals are required to take judicial notice of guidelines in force under this section.

CHAPTER 3

Obligations of auditors of regulated financial service providers

Auditor of regulated financial service provider to lodge annual report with Bank

27B.—(1) This section applies to an auditor who is required by a prescribed enactment to report a matter to the Bank.

(2) Within 3 months after the end of each financial year of a regulated financial service provider, or within such extended period as the Bank allows, the auditor of the service provider shall deliver a written report to the Bank—

- (a) stating whether or not circumstances have arisen that require the auditor to report a matter to the Bank under a prescribed enactment and, if such circumstances have arisen, specify those circumstances, and
 - (b) where the service provider has, during that financial year, been required to provide the Bank with a compliance statement—stating whether or not the requirement has been complied with.
- (3) A report under this section must be in a form publicly notified by the Bank.
- (4) The following are prescribed enactments for the purpose of this section:
- (a) section 35 of the Insurance Act 1989;

- (b) section 47 of the Central Bank Act 1989;
- (c) section 89 of the Building Societies Act 1989;
- (d) section 38 of the Trustee Savings Bank Act 1989;
- (e) section 258 of the Companies Act 1990;
- (f) section 15 of the Unit Trusts Act 1990;
- (g) section 33 of the Investment Intermediaries Act 1995;
- (h) section 34 of the Stock Exchange Act 1995;
- (i) section 122 of the Credit Union Act 1997;
- (j) regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996;
- (k) regulation 85 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003;
- (l) any other provision of an Act or regulations declared under *subsection (5)* to be a prescribed enactment for the purpose of this section.

(5) The Bank may, by notice published in the *Iris Oifigiúil*, declare a provision of an Act or regulations to be a prescribed enactment for the purpose of this section.

Duty of auditor to provide Bank with copies of certain reports

27C.—(1) If the auditor of a regulated financial service provider provides the financial service provider, or those concerned in its management, with a report on a matter that has come to the auditor's notice while carrying out audit work for the service provider, the auditor shall provide the Bank with a copy of the report. The copy must be provided at the same time as, or as soon as practicable after, the original is provided to the financial service provider or those concerned in its management.

(2) If—

- (a) an auditor of a regulated financial service provider invites the financial service provider, or the persons concerned in its management, to comment on a draft of a report referred to in *subsection (1)*, and
- (b) the financial service provider or those persons comment on the draft in response to the invitation,

the obligation of the auditor under that subsection applies only to the final version of the report.

(3) If, in relation to the financial year of a regulated financial service provider, there has been no reason for the auditor of the service provider to provide such a report, the auditor shall nevertheless notify the Bank in writing that this is the case.

Duty of auditor to provide Bank with copies of reports sent to Director of Corporate Enforcement

27D.—Whenever an auditor of a regulated financial service provider that is a company provides the Director of Corporate Enforcement with a report or other document in accordance with a requirement imposed by the Companies Acts or any other enactment, the auditor shall also provide the Bank with a copy of that report or document. The copy must be provided at the same time as, or as soon as practicable after, the original is provided to the Director of Corporate Enforcement.

Bank may request auditor of regulated financial service provider to provide Bank with report on certain matters

27E.—(1) The Bank may, by notice in writing, request an auditor of a regulated financial service provider, or an affiliate of the auditor, to provide the Bank with a report on all or any of the following:

- (a) the service provider’s accounting or other records;
- (b) the systems (if any) that the service provider has in place to ensure that the service provider acts prudently in the interests of its members (if a company or firm) and the interests of those to whom the service provider provides financial services;
- (c) any other matter in respect of which the Bank requires information about the service provider, or the service provider’s activities, to enable the Bank to perform a function imposed on it by or under an Act.

(2) The auditor or affiliate shall comply with such a request within such period as is specified in the request, or within such extended period as the Bank may allow.

(3) If the Bank so directs, the auditor or affiliate shall not, without the consent of the Bank, disclose to the financial service provider concerned, or any person concerned in the management of, or employed by, that service provider—

- (a) the fact that the auditor or affiliate has received a request under *subsection (1)*, or
- (b) any information that might lead that service provider, or any such person, to suspect that the service provider has received such a request.

Bank may require auditor of regulated financial service provider to provide certain documents

27F.—(1) The Bank may, by notice in writing, require an auditor of a regulated financial service provider, or an affiliate of the auditor, to provide the Bank with a copy of any record relating to work carried out by the auditor or affiliate for the service provider that is in the possession of the auditor or affiliate.

(2) The auditor or affiliate shall comply with such a request within such period as is specified in the request, or within such extended period as the Bank may allow.

(3) If the Bank so directs, the auditor or affiliate shall not, without the consent of the Bank, disclose to the financial service provider concerned, or any person concerned in the management of, or employed by, that service provider—

- (a) the fact that the auditor or affiliate has received a request under *subsection (1)*, or
- (b) any information that might lead that service provider, or any such person, to suspect that the service provider has received such a request.

Offences by auditors and affiliates under this Chapter

27G.—(1) An auditor of a regulated financial service provider who, without reasonable excuse, fails to comply with *section 27B(2), 27C(1), 27D, 27E(2) or 27F(2)*, or contravenes *section 27E(3) or 27F(3)*, commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

(2) An affiliate of an auditor of a regulated financial service provider who, without reasonable excuse, fails to comply with *section 27E(2) or 27F(2)*, or contravenes *section 27E(3) or 27F(3)*, commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

(3) An auditor who, having been convicted of an offence of failing to comply with a provision of *section 27B, 27C, 27D, 27E or 27F*, continues to fail to comply with the provision commits a further offence on each day or part of a day during which the failure continues after that conviction and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

(4) An affiliate of an auditor who, having been convicted of an offence of failing to comply with a provision of *section 27E or 27F*, continues to fail to comply with the provision commits a further offence on each day or part of a day during which the failure continues after that conviction and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

Auditors to have certain immunities from liability

27H.—An auditor or an affiliate of a regulated financial service provider does not—

- (a) contravene any duty of confidentiality owed to the service provider or to its creditors or clients or, if the service provider is an incorporated or unincorporated body, to its members, or
 - (b) incur any tortious liability,
- only because the auditor or affiliate complies with a duty imposed on the auditor or affiliate by this Part.”.

Substitution of Part V of Central Bank Act 1997

17.— The Central Bank Act 1997 is amended by substituting the following Parts for Part V:

“PART V

SUPERVISION OF REGULATED BUSINESSES

Definitions (Part V)

29.—In this Part—

‘Appeals Tribunal’ means the Financial Services Appeals Tribunal;

‘authorisation’ means an authorisation authorising a person to carry on—

- (a) a bureau de change business, or
- (b) a money transmission business,

and, if an authorisation is amended in accordance with *section 35*, means the authorisation as amended;

“bureau de change business” means a business that comprises or includes providing foreign currency exchange services to members of the public, other than—

- (a) services provided by a person or body referred to in section 32 (1) (a) to (k) or (m) of the Criminal Justice Act 1994 in the normal course of business, and
- (b) services provided on an ancillary basis by a trader to customers in the normal course of business;

‘inspector’ means a person appointed as an inspector under *section 36AN*;

‘money’ includes cheques and other documents that represent monetary value and any means by which monetary value is stored;

‘money transmission business’ means a business that comprises or includes providing a service of transmitting money from persons within the State to other persons (whether the other persons are within the State or elsewhere), other than such a service that is provided by a person or body referred to in section 32 (1) (a) to (k) or (m) of the Criminal Justice Act 1994 in the normal course of business;

‘officer’, in relation to a person that is a body corporate, means any person concerned in the management of the body;

‘regulated business’ means a bureau de change business or a money transmission business;

‘this Part’ includes all regulations in force under this Part;

‘transmitting’ includes transmitting—

- (a) by means of a message or other form of communication, or
- (b) by means of a transfer instrument, or
- (b) by means of a clearing network .

Person prohibited from carrying on regulated business without authorisation

30.—(1) A person shall not carry on a regulated business unless the person is the holder of an authorisation.

(2) A person who contravenes *subsection (1)* commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €100,000.

(3) A person who, after being convicted of an offence under *subsection (2)*, continues to contravene *subsection (1)* commits a further offence on each day or part of a day during which the contravention continues and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

Applications for authorisations

31.—(1) A person who wishes to carry on a regulated business can apply to the Bank for an authorisation to carry on such a business.

(2) An application must—

- (a) be in a form approved by the Bank, and
- (b) contain such information, and be accompanied by such documents, as the Bank requests, and
- (c) be accompanied by the prescribed fee (if any).

(3) The Bank may, by written notice given to an applicant, require the applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a period specified in the notice, not less than 14 days, the Bank may refuse the application.

Grant and refusal of applications for authorisation

32.—(1) Except as provided by *subsection (2)*, the Bank shall grant an application for an authorisation that complies with *section 31*.

- (2) The Bank may refuse an application for an authorisation that complies with *section 31* only if it is of the opinion that the applicant—
- (a) is not, or will not be, able to perform, in a proper manner, the responsibilities that holders of authorisations are required to perform by or under this Part, or
 - (b) is likely to engage in, or facilitate, money laundering or financing terrorism.
- (3) If the Bank proposes to refuse an application, it shall serve on the applicant a notice in writing—
- (a) specifying the grounds on which it is proposed to refuse the application, and
 - (b) informing the applicant that the applicant may, within 21 days after the giving of the notice, make written representations to the Bank showing why the application should be granted.
- (4) Not later than 21 days after being given a notice under *subsection (2)*, the applicant may make written representations to the Bank showing why the application should be granted.
- (5) The Bank may refuse an application only after having considered any representations made by the applicant in accordance with *subsection (3)*.
- (6) If the Bank refuses an application, it shall immediately give to the applicant written notice of the refusal. The notice must include a statement setting out the reasons for the refusal.
- (7) On granting an application for an authorisation, the Bank shall—
- (a) record the appropriate particulars of the applicant in the register of persons authorised to carry on bureau de change businesses or money transmission service businesses, and
 - (b) issue the applicant with an authorisation authorising the applicant to carry on the regulated business to which the application relates.

Effect and term of authorisation

33.—(1) An authorisation authorises the holder to carry on a regulated business subject to and in accordance with the conditions of the authorisation.

- (2) The fact that the Bank has granted an authorisation to carry on a regulated business does not of itself make the Bank liable for any financial loss incurred by a person—
- (a) because the holder of the authorisation, or any officer, employee or agent of that holder, has contravened a condition of the authorisation or with any requirement imposed by or under this Part, or
 - (b) because the holder of the authorisation has become insolvent.
- (3) An authorisation remains in force until revoked under this Part.

Bank may impose conditions when granting an application

34.—(1) In granting an application for an authorisation, the Bank may impose on the applicant such conditions as it believes necessary for the orderly and proper regulation of the applicant's business and, in particular, for preventing the business from being used to launder money or to finance terrorism.

(2) If the Bank grants an application subject to conditions, it shall specify those conditions in the authorisation granted to the applicant or in one or more documents annexed to that authorisation.

Bank may amend authorisation

35.—The Bank may from time to time amend an authorisation—

- (a) by varying any of its conditions, or
- (b) by replacing or revoking an existing condition, or
- (c) by adding a new condition,

but only after giving to that holder a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to, the Bank in relation to the proposed amendment.

Offence to fail to comply with certain conditions and requirements

36.—(1) The holder of an authorisation shall comply with—

- (a) the requirements imposed on holders of authorisations by this Part; and
- (b) the conditions (if any) of the authorisation, and
- (c) the requirements (if any) imposed by regulations in force under this Part.

(2) A person who fails to comply with *subsection (1)* commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

Revocation of authorisation by Bank on application of holder

36A.—The Bank may revoke an authorisation on the application of the holder of the authorisation, but only if it believes that the holder of the authorisation has fully complied with the provisions of this Part and the conditions of the authorisation.

Revocation of authorisation by Bank otherwise than on application of holder

36B.—(1) The Bank may revoke an authorisation on being satisfied on reasonable grounds that—

- (a) the holder of the authorisation has not begun to carry on a regulated business within 12 months after the date on which the authorisation was granted, or
- (b) the holder of the authorisation has not carried on such a business within the

- immediately preceding 6 months, or
- (c) the authorisation was obtained by means of a false or misleading representation, or
 - (d) the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply with a provision of this Part, a condition of the authorisation or a requirement imposed by or under this Part, or
 - (e) if the holder of the authorisation is a natural person, the holder is adjudicated bankrupt, or
 - (f) if the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890, or
 - (g) if the holder of the authorisation is a body corporate, the winding-up of the body has commenced, or
 - (h) the holder of the authorisation has come under the control of any other entity that is not regulated by the Bank to such an extent that that the affairs of the holder can no longer be supervised to the satisfaction of the Bank, or
 - (i) the circumstances under which the authorisation was granted have changed to the extent that an application for authorisation would be refused had the application been made in the changed circumstances, or
 - (j) if the holder of the authorisation is a branch or subsidiary of a body corporate that has its head office in another country that is an EEA country, the authority of that other country that performs functions similar to those of the Bank under this Part has terminated the authority of that body to carry on a regulated business in that other country, or
 - (k) the holder of the authorisation, or officer of that holder, is convicted on indictment of—
 - (i) an offence against this Part or against any other enactment prescribed by regulations in force under this Part, or
 - (ii) an offence involving fraud, dishonesty, breach of trust, money laundering or financing terrorism .

(2) If the Bank proposes to revoke an authorisation, it shall serve on the holder of the authorisation a notice in writing informing the holder of the Bank's intention to revoke the authorisation. The notice must—

- (a) specify the grounds on which it is proposed to revoke the authorisation, and
- (b) inform the holder of the authorisation that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the authorisation should not be revoked.

(3) Not later than 21 days after a notice is served on the holder of an authorisation in accordance with *subsection (2)*, the holder may make written representations to the Bank showing why the authorisation should not be revoked.

(4) The Bank may revoke the authorisation only after having considered any representations made by the holder of the authorisation in accordance with *subsection (3)*.

(5) As soon as practicable after revoking an authorisation under this section, the Bank shall give written notice of the revocation to the person who was the holder of the authorisation. The notice must include a statement of the reasons for revoking the authorisation.

(6) Unless the Appeals Tribunal otherwise orders, revocation of an authorisation under this section takes effect on and from the date of the notice of revocation or, if a later date is specified in the notice, on and from that date, irrespective of whether an appeal against the revocation is made under Part VIIA of the Central Bank Act 1942.

Bank may direct holder of authorisation to suspend business

36C.—(1) If the Bank reasonably believes that there may be grounds for revoking an authorisation under *section 36B*, it may give to the holder of the authorisation a direction in writing prohibiting it from carrying on a regulated business otherwise than under the supervision of the Bank.

(2) A direction given under this section—

- (a) must include a statement of the Bank's reasons for giving the direction, and
- (b) remains in force for such period (not exceeding 6 months) as is specified in the direction.

(3) Unless the Appeals Tribunal otherwise orders, a direction takes effect from the date of the direction or, if a later date is specified in the direction, from that date, irrespective of whether or not the holder of the authorisation appeals against the direction.

(4) The holder of an authorisation shall comply with a direction given under this section and the conditions (if any) contained in the direction.

(5) The Bank may, by notice in writing given to the holder of the authorisation concerned, amend or revoke a direction given under this section.

(6) Without limiting *subsection (5)*, the Bank may from time to time, by notice in writing given to the holder of the authorisation concerned, extend the period during which a direction remains in force by a further period not exceeding 6 months.

(7) A direction given under this section ceases to have effect—

- (a) at the end of the period specified in the direction, or if the period is extended under *subsection (6)*, at the end of the extended period, or
- (b) the revocation of the holder's authorisation under this Part, whichever first occurs.

- (8) A person who contravenes a direction given under this section, or fails to comply with a condition of the direction, commits an offence and—
- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
 - (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

Bank to keep register of persons authorised to carry on regulated businesses

36D.—(1) The Bank is required to establish and keep a register of persons authorised to carry on regulated businesses.

(2) The register must contain the name and the address of the principal place of business of each person authorised to carry on a regulated business and such other information as the Bank determines.

(3) A register may be in book form, electronic form or such other form as the Bank determines from time to time. If a register is kept in an electronic form that is not visually readable, the register must be capable of being reproduced in a visually readable form.

(6) The Bank is to keep the registers at its head office or at such other place as it specifies by notice published in the *Iris Oifigiúil*.

(7) Members of the public are entitled, without charge, to inspect the registers during the ordinary business hours of the Bank. However, the Bank may impose a reasonable charge for providing a copy of a register or of an entry in a register.

(8) The Bank shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in a publication decided by the Bank a list of persons authorised to carry on regulated businesses. If regulations in force under this Part so require, the list must contain such other particulars as are prescribed by those regulations.

Holders of authorisations to keep certain records

36E.—(1) The holder of an authorisation shall—

- (a) keep at an office or offices within the State such records as may be specified from time to time by the Bank, and
- (b) notify the Bank in writing of the address of the office or offices where those records are kept.

Different kinds of records may be specified under this subsection for different kinds of authorisations.

(2) The requirement imposed by subsection (1) is additional to any other requirement imposed by law with respect to the keeping of records by the holder of an authorisation and by related bodies.

(3) The holder of an authorisation shall keep the records referred to in subsection (1) for such period as the Bank notifies in writing to that holder.

(4) The holder of an authorisation may keep documents wholly or partly in a non-legible form so long as they are capable of being reproduced in a legible form.

Decisions of Bank under this Part to be appealable decisions for purposes of Part VIIA of Central Bank Act 1942

36F.—The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) the refusal of an application made under *section 30*, or
- (b) the imposition of conditions on the granting of an authorisation (not being conditions prescribed by regulations in force under this Part);
- (c) the amendment of an authorisation under *section 35*;
- (d) the revocation of an authorisation under *section 36B*;
- (e) the giving of a direction under *section 36C*.

Offences by persons concerned in management of bodies corporate

36G.—(1) If a body corporate commits an offence under this Part, each person who was, at the time the offence is found to have been committed, concerned in the management of the body commits an offence, unless the person establishes that—

- (a) the body committed the offence without the person's knowledge, or
- (b) although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

(2) A person may be charged with having committed an offence under this section even if the holder of the body corporate concerned is not charged with having committed an offence under this Part in relation to the same matter.

(3) A person who is convicted of an offence under this section is—

- (a) if tried summarily, liable on conviction to a fine not exceeding €2,000 and imprisonment for a term not exceeding 3 months, or both, or
- (b) if tried on indictment, liable on conviction to a fine not exceeding €50,000 or a term not exceeding 12 months, or both.

Bank may make regulations for purposes of this Part

36H.—(1) The Bank may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed, or that is necessary or expedient to be prescribed, for carrying out or giving effect to this Part.

(2) A regulation under subsection (1) may require holders of authorisations to pay an annual administration fee to the Bank.

(3) If a regulation impose a requirement to pay an annual administration fee to the Bank and the holder of an authorisation fails to pay the fee within the period, or by the date,

specified in the regulation, the Bank may, by proceedings brought in a court of competent jurisdiction, recover the amount of the fee from the holder as a debt due to the Bank.

(4) A provision of a regulation under this section may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

PART VA

SUPERVISION OF HOME LENDING INSTITUTIONS

CHAPTER 1

Preliminary provisions

Definitions (Part VA)

36I.—In this Part—

‘Appeals Tribunal’ means the Financial Services Appeals Tribunal;

‘authorisation’ means an authorisation granted under this Part that authorises the person named in the authorisation to carry on a home lending business and, in the case of an authorisation that is amended in accordance with section 36P, means the authorisation as amended;

‘authorised home lending institution’ means a holder of an authorisation or an exempt body;

‘caravan’ includes a motor home or other vehicle designed or adapted for occupation as a dwelling;

‘code of industry standards’ means a code issued under *section 36AC* or, if the code is amended in accordance with that section, means the code as amended;

‘Codified Banking Directive’ means Directive 2000/12/EC of the European Parliament and of the Council of the European Communities of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, and includes that Directive as amended or replaced from time to time;

‘credit institution’ means a credit institution as defined in the Codified Banking Directive;

‘exempt body’ means a body exempted under *section 36J(2)*;

“financial accommodation” includes (but is not limited to) the following:

(a) a loan of money;

(b) a financial benefit arising from issuing, endorsing or otherwise dealing in

promissory notes;

- (c) a financial benefit arising from drawing, accepting, endorsing or otherwise dealing in bills of exchange;
- (d) a financial benefit arising from issuing, purchasing or otherwise dealing in securities;
- (e) a financial benefit arising from granting or taking a lease of real or personal property for financing but not for operating purposes;

‘home’ means—

- (a) a building or part of a building that is occupied or designed for occupation as a dwelling, including any garden and any garage, shed or other structure used or designed for use in conjunction with the dwelling, or
- (b) a caravan or houseboat;

‘home lending business’ means a business that involves providing financial accommodation to a person on the security of the principal home of the person or of the person’s dependants, whether or not the business is carried on in conjunction with any other business;

‘house boat’ includes any vessel that is designed or adapted for occupation as a dwelling;

‘inspector’ means a person appointed as an inspector under *section 36AN*;

‘issuing’ includes amending and replacing;

‘this Part’ includes all regulations in force under this Part.

CHAPTER 2

Prohibited conduct

Person prohibited from carrying on home lending business without authorisation

36J.—(1) A person shall not carry on a home lending business unless the person is the holder of an authorisation or is an exempt body.

(2) The following bodies are exempt from being required to hold an authorisation for the purposes of this Part:

- (a) the holder of a licence granted under section 9 of the Central Bank Act 1971;
- (b) a building society incorporated under the Building Societies Act 1989 or deemed to be incorporated as such under section 124(2) of that Act;
- (c) the holder of a licence as a trustee savings bank issued under the Trustee Savings Bank Act 1989;
- (d) a credit institution that is authorised by a competent authority of an EEA country (other than this State) for the purposes of the Codified Banking Directive;
- (e) a local authority.

- (3) A person who contravenes *subsection (1)* commits an offence and—
 - (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
 - (b) if tried on indictment, is liable on conviction to a fine not exceeding €100,000.
- (4) A person who, after being convicted of an offence under *subsection (3)*, continues to contravene *subsection (1)* commits a further offence on each day or part of a day during which the contravention continues and—
 - (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or
 - (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

Certain transactions entered into by unauthorised home lending institutions not enforceable

36K.—A person who carries on a home lending business in contravention of *section 36J* is not entitled to enforce—

- (a) a contract under which the person provides financial accommodation on the security of a principal home, or
- (b) any other contract that is collateral to such a contract.

CHAPTER 3

Authorisations to carry on home lending businesses

Applications for authorisations

36L.—(1) A person (other than an exempt body) who wishes to carry on a home lending business may apply to the Bank for an authorisation authorising the person to carry on such a business.

- (2) An application must—
 - (a) be in a form approved by the Bank, and
 - (b) contain such information, and be accompanied by such documents, as the Bank requests, and
 - (c) be accompanied by the prescribed fee (if any).

(3) The Bank may, by written notice given to an applicant, require the applicant to provide additional information and documents as is reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a period specified in the notice, not exceeding 60 days, the Bank may reject the application.

Grant and refusal of applications for authorisation

36M.—(1) The Bank shall grant an application that complies with *section 36L* if satisfied that—

- (a) the applicant is or will be able to carry out, in a proper manner, the responsibilities that a home lending institution is required to carry out by or under this Part, and
 - (b) the applicant has complied with, or will be able to comply with, such requirements (if any) relating to home lending institutions as are prescribed by or under this Part, and
 - (c) the applicant has sufficient capital, expertise and resources to enable it to carry on a home lending business in a proper and competent manner, and
 - (d) the directors and other persons concerned in the management of the applicant have the probity and competency necessary to enable them to undertake the prudent management of such a business.
- (2) If the Bank is not so satisfied, it shall refuse the application. However, before refusing an application, the Bank shall, by notice in writing given to the applicant—
- (a) specify the grounds on which it is proposed to refuse the application, and
 - (b) inform the applicant that the applicant may, within 21 days after the giving of the notice, request a hearing of the Bank to enable the applicant to establish why the application should be granted.
- (3) Not later than 21 days after being given a notice under *subsection (2)*, the applicant may request the Bank to hold a hearing to enable the applicant to establish why the application should be granted.
- (4) As soon as practicable after the applicant makes a request under *subsection (3)*, the Bank shall fix a date, time and place for the matter to be heard and shall notify the applicant of the date, time and place so fixed.
- (5) If the Bank refuses an application, it shall immediately give to the applicant written notice of the refusal. The notice must include a statement setting out the reasons for the refusal.
- (6) On granting an application, the Bank shall—
- (a) issue the applicant with an authorisation authorising the applicant to carry on a home lending business, and
 - (b) record the appropriate particulars of the applicant in the register of authorised home lending institutions.

Effect and term of authorisation

36N.—(1) An authorisation authorises its holder to carry on a home lending business subject to and in accordance with the conditions of the authorisation.

(2) The fact that the Bank has granted an authorisation does not of itself make the Bank liable for any financial loss incurred by a person—

- (a) because the holder of the authorisation, or any officer, employee or agent of

- that holder, has contravened or failed to comply with a provision of this Part, or any condition or requirement of the authorisation, or
- (b) because the holder of the authorisation has become subject to an insolvency process.
 - (3) An authorisation remains in force until revoked under this Part.

Bank may impose conditions when granting an application

36O.—(1) In granting an application for an authorisation, the Bank may impose on the applicant such conditions as it believes necessary for the orderly and proper regulation of the applicant's home lending business.

(2) If the Bank has imposed conditions or requirements on the applicant under this section, it shall specify those conditions or requirements in the authorisation or in one or more documents annexed to the authorisation.

Bank may amend authorisation

36P.—The Bank may from time to time amend an authorisation—

- (a) by varying any of its conditions, or
- (b) by replacing or revoking an existing condition, or
- (c) by adding a new condition,

but only after giving to that holder a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to, the Bank in relation to the proposed amendment.

Revocation of authorisation by Bank on application of holder of authorisation

36Q.—The Bank may revoke an authorisation on the application of the holder of the authorisation, but only if it believes that the holder of the authorisation has fully complied with the provisions of this Part and the conditions and requirements imposed by the authorisation.

Revocation of authorisation by Bank otherwise than on application of holder of authorisation

36R.—(1) The Bank may revoke an authorisation on being satisfied on reasonable grounds that—

- (a) the holder of the authorisation has not begun to carry on a home lending business within 12 months after the date on which the authorisation was granted, or
- (b) the holder of the authorisation has not carried on such a business within the immediately preceding 6 months, or
- (c) the authorisation was obtained by means of a false or misleading

representation, or

- (d) the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply with a provision of this Part, a condition of the authorisation or a requirement imposed by or under this Part, or
- (e) the holder of the authorisation is a natural person and the person is adjudicated bankrupt, or
- (f) the holder of the authorisation is a partnership and the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890, or
- (g) the holder of the authorisation is a company and the winding-up of the company has commenced, or
- (h) the holder of the authorisation has come under the control of another entity that is not supervised by the Bank to such an extent that the affairs of that holder can no longer be supervised to the satisfaction of the Bank, or
- (i) since the authorisation was granted, the circumstances under which it was granted have changed to the extent that an application for authorisation would be refused had the application been made in the changed circumstances, or
- (j) if the holder of the authorisation is a branch or subsidiary of a body corporate that has its head office in another EEA country, an authority of that other country that performs functions similar to those of the Bank under this Part has terminated the authority of that body to carry on a regulated business in that other country, or
- (k) the holder of the authorisation, or officer of that holder, is convicted on indictment of an offence against this Part or against any other enactment prescribed by regulations in force under this Part.

(2) Before revoking an authorisation, the Bank shall, by notice in writing given to the holder of the authorisation—

- (a) specify the grounds on which it is proposed to revoke the authorisation, and
- (b) inform the holder of the authorisation that that holder may, within 21 days after the giving of the notice, request a hearing of the Bank to enable that holder to establish why the authorisation should not be revoked.

(3) Not later than 21 days after being given a notice under *subsection (2)*, the holder of the authorisation concerned may request the Bank to hold a hearing to enable that holder to establish why the authorisation should not be revoked.

(4) As soon as practicable after the holder of an authorisation makes a request under *subsection (3)*, the Bank shall fix a date, time and place for the matter to be heard and shall notify that holder of the date, time and place so fixed.

(5) If the Bank revokes an authorisation under this section, it shall give written notice of the revocation to the person who was the holder of the authorisation. The notice must include a statement of the reasons for revoking the authorisation.

- (6) The revocation of an authorisation under this section takes effect on and from—
- (a) the end of the period within which an appeal against the revocation can be lodged with the Appeals Tribunal, or
 - (b) if an appeal against the revocation is lodged within that period and is not subsequently withdrawn, the date (if any) on which the revocation is affirmed by that Tribunal.

Bank may direct holder of authorisation to suspend home lending business

36S.—(1) If the Bank reasonably believes that there may be grounds for revoking an authorisation under *section 36R*, it may give to the holder of the authorisation a direction in writing prohibiting it from carrying on a home lending business otherwise than under the supervision of the Bank.

- (2) A direction given under this section—
- (a) must include a statement of the Bank’s reasons for giving the direction, and
 - (b) remains in force for such period (not exceeding 6 months) as is specified in the direction.

(3) Subject to any decision of the Appeals Tribunal to the contrary, a direction takes effect from the date of the direction or, if a later date is specified in the direction, from that date, irrespective of whether or not the holder of the authorisation appeals against the direction.

(4) The holder of an authorisation shall comply with a direction given under this section and the conditions (if any) contained in the direction.

(5) The Bank may, by notice in writing given to the holder of the authorisation concerned, amend or revoke a direction given under this section.

(6) Without limiting *subsection (5)*, the Bank may from time to time, by notice in writing given to the holder of the authorisation concerned, extend the period during which a direction remains in force by a further period not exceeding 6 months.

- (7) A direction given under this section ceases to have effect—
- (a) at the end of the period specified in the direction, or if the period is extended under *subsection (6)*, at the end of the extended period, or
 - (b) on the revocation of the holder’s authorisation under this Part,

whichever first occurs.

(8) A person who contravenes a direction given under this section, or fails to comply with a condition of the direction, commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or

- (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

Procedure at hearings

36T.—(1) The Bank shall conduct a hearing under this Part with as little formality and technicality, and with as much expedition, as a proper consideration of the matter allows.

(2) The Bank shall hold the hearing in public, unless the holder of the authorisation concerned requests the hearing to be held in private, in which case, the Bank may, unless it thinks that it would not be in the public interest to do so, decide to hold the hearing in private.

(3) In conducting a hearing, the Bank—

- (a) is not bound by the rules of evidence, and
- (b) may, on such conditions as it thinks fit, permit a person to intervene, and
- (c) shall observe the rules of natural justice.

(4) When holding a hearing, the Bank is entitled to be assisted by a legal practitioner.

(5) The holder of the authorisation concerned is entitled to be represented at the hearing by a legal practitioner or, with the leave of the Bank, by any other person.

Bank to keep register of holders of authorisations and exempt bodies

36U.—(1) The Bank is required to establish and keep a register of holders of authorisations and of exempt bodies.

(2) The register must contain the name and the address of the principal place of business of each holder of an authorisation and of each exempt body and such other information relating to the holder or exempt body as the Bank determines.

(3) A register may be kept in book form, electronic form or such other form as the Bank determines from time to time. If a register is kept in an electronic form that is not visually readable, the register must be capable of being reproduced in a visually readable form.

(4) The Bank is to keep the registers at its head office or at such other place as it specifies by notice published in the *Iris Oifigiúil*.

(5) Members of the public are entitled, without charge, to inspect the registers during the ordinary business hours of the Bank. However, the Bank may impose a reasonable charge for providing a copy of a register or of an entry in a register.

(6) The Bank shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in a publication decided by the Bank a list of persons authorised to carry on home lending businesses. If regulations in force under this Part so require, the list must contain such other particulars as are prescribed by those regulations.

CHAPTER 4

Accounting and other obligations of holders of authorisations

Financial year of holder of authorisation

36V.—The financial year of the holder of an authorisation is the period of 12 months beginning on 1 January or such other period (not less than 6 months or more than 18 months) as the holder has notified to the Bank.

Holder of an authorisation to keep proper accounts

36W.—(1) The holder of an authorisation shall keep accounting records that properly record and explain its financial transactions so that—

- (a) true and fair financial statements can be prepared, and
- (b) those statements can be conveniently and properly audited.

(2) The holder of an authorisation shall ensure that its accounting records comply with any accounting standards notified to that holder by the Bank.

(3) The holder of an authorisation shall keep its accounting records for 6 years after the transactions to which they relate are completed and may, at the end of that period, either retain those records or dispose of them in such manner as that holder considers appropriate. This subsection has effect despite any other enactment to the contrary.

(4) The holder of an authorisation is required to make the records available at all reasonable times for inspection by the Bank or by an inspector.

Holder of authorisation to have an auditor

36X.—(1) The holder of an authorisation shall, as soon as practicable after the authorisation is granted, appoint an auditor to audit the accounts of the holder.

(2) As soon as practicable after a vacancy occurs in the office of auditor of the holder of an authorisation, the holder shall appoint another auditor to fill the vacancy.

(3) The holder of an authorisation may terminate the appointment of an auditor only with the prior approval of the Bank.

(4) Compliance with any other enactment requiring the appointment of an auditor is taken to be compliance with this section.

Holder of authorisation to prepare annual financial statement

36Y.—(1) The holder of an authorisation must ensure that the following financial statements are prepared as soon as practicable after the end of each financial year of the holder—

- (a) an income and expenditure account that gives a true and fair view of the holder's income and expenditure for that year;
- (b) a balance sheet as at the end of that year that provides a true and fair view of

the holder's financial position as at the end of that year.

(2) *Subsection (1)* does not apply to the holder of an authorisation if the holder prepares financial statements that comply with the Companies Acts.

(3) The holder of an authorisation must ensure that the holder's financial statements comply with any accounting standards notified to the holder by the Bank. This subsection has effect irrespective of whether subsection (1) does not apply to the holder because of *subsection (2)*.

CHAPTER 5

Regulation of authorised home lending institutions

Authorised home lending institutions to keep certain records

36Z.—(1) An authorised home lending institution shall—

- (a) keep at an office or offices within the State such records (other than accounting records) as may be specified from time to time by the Bank, and
- (b) notify the Bank in writing of the address of the office or offices where those records are kept.

Different kinds of records may be specified under this subsection for different kinds of authorised home lending institutions.

(2) The requirement imposed by *subsection (1)* is additional to any other requirement imposed by law with respect to the keeping of records by the holder of an authorisation and by related bodies.

(3) An authorised home lending institution shall keep the records referred to in *subsection (1)* for such period as the Bank notifies in writing to that institution.

(4) An authorised home lending institution may keep documents wholly or partly in a non-legible form so long as they are capable of being reproduced in a legible form.

Bank may require authorised home lending institution to provide it with certain information

36AA.—(1) The Bank may serve on an authorised home lending institution a notice in writing requiring the institution to provide to the Bank, within a specified period, such information or documents relating to the home lending activities of the institution as are specified in the notice.

(2) An authorised home lending institution that, without reasonable excuse, fails to comply with a notice served on it under subsection (1) commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €25,000.

(3) An authorised home lending institution that, after being convicted of an offence under subsection (2), continues to fail to comply with a notice served on it under subsection

(1) commits a further offence on each day or part of a day during which the failure continues and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

Obligations of authorised home lending institutions with respect to provision of financial accommodation

36AB.—(1) An authorised home lending institution shall not enter into a contract with a person for the provision of financial accommodation on the security of a principal home unless satisfied that the person has the capacity to meet the person’s payment obligations under the contract.

(2) An authorised home lending institution shall not enter into a contract with a person for the provision of financial accommodation on the security of a principal home if the contract includes terms that are likely to cause, or contribute to causing, the person to default in meeting the person’s obligations under the contract.

CHAPTER 6

Codes of industry standards

Bank may issue codes of industry standards

36AC.—(1) The Bank may issue a code of industry standards setting out the standards that authorised home lending institutions must comply with in carrying on a home lending business.

(2) A provision of a code of industry standards may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

(3) The Bank may from time to time amend or replace a code of industry standards.

Steps to be taken before issuing a code of industry standards

36AD.—(1) Before issuing a code of industry standards, the Bank shall—

- (a) give public notice of the place at which, the dates on which, and the times during which, a draft code setting out the proposed standards may be inspected

- by the public, and
- (b) publicly exhibit a copy of the draft code at the place, on the dates and during the times set out in the notice, and
- (c) specify, in the notice, the period during which submissions may be made to the Bank.

(2) Any person may, during the period referred to in *subsection (1)(c)*, make submissions in writing to the Bank with respect to the provisions of the draft code.

(3) In preparing a code for issue under *subsection (1)*, the Bank shall take into account—

- (a) any submissions made under *subsection (2)*, and
- (b) the interests of consumers and the need to promote fair competition in financial markets in the State.

Bank may require information about compliance arrangements

36AE.—(1) The Bank may require an authorised home lending institution to provide the Bank with information concerning the arrangements that have been made by the institution to enable the institution to comply with a code of industry standards that applies to the institution.

(2) Any such requirement must be in writing and specify a period within which the requirement is to be complied with.

(3) An authorised home lending institution shall comply with a requirement made to it under this section within the period (if any) specified in the requirement.

Publication and commencement of codes of industry standards

36AF.—(1) Whenever the Bank issues a code of industry standards, or amends or revokes such a code, the Bank shall publish in the *Iris Oifigiúil* a notice—

- (a) stating that the code has been issued, or has been amended or revoked, and
- (b) specifying a place or places where copies of the code, or the amendment or revocation, may be obtained.

(2) The Bank shall publish a code of industry standards, and any amendment or revocation of the code, in a publication chosen by the Bank.

(3) A code of industry standards takes effect on the date on which notice of its issue is published in the *Iris Oifigiúil* or on such later date as is specified in the notice.

(4) An amendment or revocation of a code of industry standards takes effect on the date on which notice of the amendment or revocation is published in the *Iris Oifigiúil* or on such later date as is specified in the notice.

Bank to ensure that codes of industry standards are kept available for members of the public

36AG.—(1) The Bank shall ensure that a copy of every code of industry standards is made available for public inspection without charge during the normal office hours of the Bank.

(2) If the code refers to or incorporates any other document prepared or published by a specified body, the Bank shall also ensure that a copy of each such document is made available with the code.

CHAPTER 7

Supplementary provisions

Offence to fail to comply with conditions and requirements

36AH.—(1) The holder of an authorisation shall comply with the conditions (if any) of the authorisation.

(2) A holder of an authorisation who fails to comply with *subsection (1)* commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €100,000.

(3) An authorised home lending institution shall comply with the requirements imposed on authorised lending institutions by or under this Part.

(4) *Subsection (3)* does not apply to an authorised home lending institution in relation to a requirement if the institution is exempt from the requirement because of a provision of a regulation or code in force under this Part.

(5) An authorised home lending institution that fails to comply with *subsection (3)* commits an offence and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €100,000.

Offences by persons concerned in management of bodies corporate

36AI.—(1) If a body corporate commits an offence under this Part, each person who was, at the time the offence is found to have been committed, concerned in the management of the body commits an offence, unless the person establishes that—

- (a) the body committed the offence without the person's knowledge, or
- (b) although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

(2) A person may be charged with having committed an offence under this section even if the body corporate concerned is not charged with having committed an offence under this Part in relation to the same matter.

(3) A person who is convicted of an offence under this section is—

- (a) if tried summarily, liable on conviction to a fine not exceeding €2,000 and imprisonment for a term not exceeding 3 months, or both, or
- (b) if tried on indictment, liable on conviction to a fine not exceeding €50,000 or a term not exceeding 12 months, or both.

Certain transactions not enforceable by authorised home lending institutions

36AJ.—An authorised home lending institution that has entered into a contract for the provision of financial accommodation on the security of a principal home is not entitled to enforce the contract if—

- (a) the contract contravenes a provision of this Part or does not comply with an applicable code of industry standards, or
- (b) in relation to the operation of the contract, the institution engages in conduct that is inconsistent with such a provision or code.

Decisions of Bank under this Part to be appealable decisions for purposes of Part VIIA of Central Bank Act 1942

36AK.—The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) the refusal of an application made under *section 36M*, or
- (b) the imposition of conditions on the granting of an authorisation (not being conditions prescribed by regulations in force under this Part);
- (c) the amendment of an authorisation under *section 36P*;
- (d) the revocation of an authorisation under *section 36R*;
- (e) the giving of a direction under *section 36S*.

Bank may make regulations for purposes of this Part

36AL.—(1) The Bank may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed, or that is necessary or expedient to be prescribed, for carrying out or giving effect to this Part.

(2) A regulation under subsection (1) may require holders of authorisations to pay an annual administration fee to the Bank.

(3) If a regulation impose a requirement to pay an annual administration fee to the Bank and the holder of an authorisation fails to pay the fee within the period, or by the date, specified in the regulation, the Bank may, by proceedings brought in a court of competent jurisdiction, recover the amount of the fee from the holder as a debt due to the Bank.

(4) A provision of a regulation under this section may—

- (a) apply generally or be limited in its application by reference to specified

- exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

PART VB

ENFORCEMENT OF PARTS V AND VA

Appointment of inspectors

36AM.—(1) The Bank may, in writing, appoint employees of the Bank or other suitably qualified persons to be inspectors for the purpose of securing compliance with *Parts V* and *VA*, or with any specified provisions of those Parts.

(2) The Bank may, in writing, revoke the appointment of an inspector whenever it considers it appropriate to do so.

Powers of inspectors with respect to holders of authorisations

36AN.—(1) An inspector may, at all reasonable times on production of evidence of the person's appointment, enter any premises at which the inspector reasonably believes that a regulated business is being carried on.

(2) An inspector who has entered premises in accordance with *subsection (1)* may exercise all or any of the following powers:

- (a) inspect the premises;
 - (b) request any person on the premises who apparently has control of, or access to, records that relate to a regulated business to produce the records for inspection;
 - (c) inspect records produced in accordance with such a request or found in the course of inspecting the premises;
 - (d) take copies of those records or of any part of them, and
 - (e) request any person who appears to the authorised person to have information relating to the records, or to a regulated business, to answer questions with respect to the records or that business.
- (3) A person to whom a request is made in accordance with *subsection (2)* shall—
- (a) comply with the request so far as it is possible to do so, and
 - (b) give such other assistance and information to the inspector with respect to the regulated business as is reasonable in the circumstances.

(4) The powers conferred by *subsection (2)* may also be exercised in relation to any other person who, in the opinion of the Bank or an inspector, has information that is materially relevant to the exercise of those powers in relation to a regulated business.

(5) The production of a record in compliance with a request made under this section does not prejudice a person's lien over the record.

(6) Nothing in this section requires a legal practitioner to produce a record that contains a privileged communication made by or to the practitioner or to disclose any information that relates to the communication.

(7) In this section—

'legal practitioner' means a barrister or solicitor;

'suitably qualified person' means any person (other than an employee of the Bank) who, in the opinion of the Bank, has the qualifications and experience necessary to exercise the powers conferred on inspectors by this section.

Offence to obstruct inspectors in the exercise of their powers

36AO.—A person who—

- (a) obstructs an inspector in the exercise of a power conferred on inspectors by this Part, or
 - (b) without reasonable excuse, fails to comply with a requirement or request made by an inspector under this Part, or
 - (c) in purported compliance with such a requirement or request, gives information that the person knows to be false or misleading,
- commits an offence and is liable on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both.

Court may make enforcement orders

36AP.—(1) If a person has engaged, is engaging or is about to engage in conduct that involved, involves or would involve—

- (a) contravening a provision of *Part V* or *Part VA*, or
- (b) attempting to contravene such a provision, or
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision, or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision, or
- (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by a person of such a provision, or
- (f) conspiring with others to contravene such a provision,

the Court may make an order restraining the person from engaging in the conduct. The Court may include in the order a requirement that the person do a specified act.

(2) If a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do an act that the person is required to do by or under a provision of this Part, the Court may make an order requiring the person to do that act.

(3) An order under this section may be made only on the application of the Bank or some other person whose interests have been, are or would be affected by the conduct or by the refusal or failure to do the act concerned.

(4) The Court may hear an application for an order under this section only if it is satisfied that the person in relation to whom the order is sought has been served with a copy of the application at least 7 days before the hearing.

(5) An order under this section may be made on such terms as the Court thinks appropriate.

(6) The Court may grant an interim order pending the determination of an application under this section.

(7) If the Bank applies to the Court to make an order under this section, the Court may not require the applicant or any other person to give an undertaking as to damages as a condition of granting an interim order.

(8) The Court may discharge or vary an order made under this section.

(9) The power of the Court to make an order restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to repeat, or to continue, the conduct, and
- (b) whether or not the person has previously engaged in that kind of conduct, and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in that kind of conduct.

(10) The power of the Court to grant an injunction requiring a person to do an act may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act, and
- (b) whether or not the person has previously refused or failed to do that act, and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act.

(11) Whenever the Court has power under this section to make an order restraining a person from engaging in particular conduct, or requiring a person to do a particular act, it may, either in addition to or instead of making such an order, order the person to pay damages to another person.”.

Amendment of section 53 of Central Bank Act 1997 (Application of section 47 of Act of 1989)

18.—Section 53 of the Central Bank Act 1997 is amended by deleting “, 1942 to 1997”.

Amendment of section 84 of Central Bank Act 1997 (Representative offices)

19.—Section 84(5) of the Central Bank Act 1997 is amended by deleting “, 1942 to 1997”.

PART 4

AMENDMENT OF OTHER LEGISLATION

Miscellaneous amendments to other Acts

20.— The Acts specified in *Schedule 1* are amended as indicated in that Schedule.

Amendment of European Communities Regulations

21.—The Regulations specified in Schedule 2 are amended as indicated in that Schedule.

Savings and transitional provisions

22.—The savings and transitional provisions set out in Schedule 3 have effect.

[To be inserted.]

SCHEDULE 1

Section 20.

AMENDMENT OF ACTS

PART 1

AMENDMENT OF INSURANCE ACT 1936

INSURANCE ACT 1936

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
1.	Section 3	(a) Insert “(1)” before “In this Act”; (b) Insert the following subsection at the end of the section: “ (2) A financial contract within the meaning of the 1995 Act is not, and is taken never to have been, a contract of insurance for the purposes of— (a) the Insurance Acts 1909-2002, or

		<p>(b) regulations made under those Acts, or</p> <p>(c) regulations relating to insurance made under the European Communities Act 1972.</p> <p>However, this subsection does not have effect if the financial contract provides for any benefit that may accrue to a party to the contract to be conditional on the occurrence of a loss or detriment to which the party is required to be exposed under the contract.”.</p>
2.	Section 51	In subsection (2), substitute “may not pay, or may not undertake” for “may pay, or undertake”.

PART 2

AMENDMENT OF CENTRAL BANK ACT 1942

CENTRAL BANK ACT 1942

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
1.	Section 6B (as inserted by 7 of the Central Bank and Financial Services Authority of Ireland Act 2003)	<p>Substitute the following section:</p> <p>“Offices of the Bank</p> <p>6B.—(1) For the purpose of enabling the Bank to perform its functions, the Board—</p> <p style="padding-left: 40px;">(a) may acquire and hold land, and</p> <p style="padding-left: 40px;">(b) may build, establish, equip and maintain offices and other premises,</p> <p>in such places, whether in the State or elsewhere, as it considers appropriate.</p> <p style="padding-left: 40px;">(2) The Board may sell, lease or otherwise dispose of land held by the Bank whenever the Board considers that the land is no longer required for the purpose of enabling the Bank to perform its functions.</p> <p style="padding-left: 40px;">(3) In this section, ‘acquire’ includes acquire by purchase, lease or exchange.”.</p>
2.	Section 33AC (as inserted by 26 of	In subsection (1), substitute “within 9 months after the end of each financial year” for “not later than the end of September in each

	the Central Bank and Financial Services Authority of Ireland Act 2003)	year”.
3.	Schedule 2, Part 1	(a) Delete the item relating to the Criminal Justice Act 1994; (b) In column 3 of the item relating to the Central Bank Act 1997, insert “and section 77” after “Parts II and III”.
4.	Schedule 2, Part 2	In column 3 of the item relating to the Building Societies Regulations 1987, substitute “The whole instrument” for “First Schedule to Article 8”.
5.	Schedule 5 (as inserted by 33 of the Central Bank and Financial Services Authority of Ireland Act 2003)	In paragraph 12(2), substitute “under section 57F” for “by or under this Schedule”.

PART 3

AMENDMENT OF COMPANIES ACT 1963

COMPANIES ACT 1963

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
1.	Section 103	In subsection (1)(b), insert the following subparagraph after subparagraph (iii): “(iia) if the charge is a floating one, particulars of any provision of the charge that has the effect of prohibiting or restricting the company from issuing further securities that rank equally with that charge or modifying the ranking of that charge in relation to securities previously issued by the company;”.

PART 4

AMENDMENT OF INSURANCE ACT 1964

INSURANCE ACT 1964		
<i>Item</i>	<i>Provision inserted or affected</i>	<i>Amendment</i>
	Section 3 (as amended by section 31 of the Insurance Act 1989)	In subsection (1B), substitute “in respect of a risk” for “in the State in respect of a risk situated in the State”.
	Section 6 (as amended by section 10 of the Insurance (No.2) Act 1983 and by section 31 of the Insurance Act 1989)	In the definition of “aggregate income” in subsection (2)(d), substitute “issued by the insurer in that period” for “issued by him in the State in that period in respect of risks situated in the State”.

PART 5

AMENDMENT OF CENTRAL BANK ACT 1971

CENTRAL BANK ACT 1971		
<i>Item</i>	<i>Provision inserted or affected</i>	<i>Amendment</i>

1.	Section 2 (As amended by section 70 of the Central Bank Act 1997 and Item 1 of Part VI of Schedule 1 of the Central Bank and Financial Services Authority of Ireland Act 2003)	<p>(a) In subsection (1), insert the following definition after the definition of “the Act of 1942”:</p> <p>“ ‘associated company’, in relation to the holder of a licence, means a company in respect of which—</p> <p>(a) not less than 20 per cent of the nominal value of the company’s equity share capital are held by the company, or</p> <p>(b) not less than 20 per cent of shares carrying voting rights (other than voting rights that arise only in particular circumstances) are so held;”;</p> <p>(b) In subsection (1), insert the following definition after the definition of “banking business”:</p> <p>“ ‘Central Bank Acts’ means the Central Bank Act 1942 as amended from time to time, and includes all Acts that are to be construed together with that Act as one Act;”;</p> <p>(c) In subsection (1), insert the following definition after the definition of “holder”:</p> <p>“ ‘holding company’ has the meaning given by section 155 of the Companies Act 1963;</p> <p>(d) In subsection (1), insert the following definition after the definition of “investment trust company”:</p> <p>“ ‘legal practitioner’ means a barrister or solicitor;</p> <p>(e) In subsection (1), insert the following definitions after the definition of “the Court”:</p> <p>“ ‘ESCB Statute’ means the Statute of the European System of Central Banks and of the European Central Bank as set out in Protocol (No. 3) (annexed by the Treaty on <i>European Union</i> done at Maastricht on 7 February 1992) to the Rome Treaty;</p> <p>‘functions’, in relation to the Bank, means the functions of the Bank imposed—</p> <p>(a) by the Central Bank Acts, and</p> <p>(b) by virtue of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992;”;</p> <p>(f) In subsection (1), insert the following definitions after the definition of “the Minister”:</p> <p>“ ‘records’ means any record of information however compiled, recorded or stored, and includes—</p> <p>(a) all books, registers and other kinds of documents, and</p>
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		<p>(b) information kept in a non-legible form (whether electronically or otherwise), and</p> <p>(c) the means (if any) by which information is capable of being reproduced visually or aurally;</p> <p>‘related body’ means-</p> <p>(a) a subsidiary company of a holder of a licence or,</p> <p>(b) if the holder of a licence is a subsidiary—</p> <p>(i) its holding company, or</p> <p>(ii) any other subsidiary of its holding company, or</p> <p>(c) an associated company of the holder of a licence, or</p> <p>(d) a partnership in which the holder of a licence has an interest, and whose business is or, at any relevant time, was in the Bank’s opinion materially relevant to an inspection being carried out, or proposed to be carried out, under this section;</p> <p>‘Rome Treaty’ means the Treaty establishing the European Community done at Rome on 25 March 1957, as amended by the Treaty on <i>European Union</i> done at Maastricht on 7 February 1992;”;</p> <p>(g) In subsection (1), insert the following definition after the definition of “securities”:</p> <p>“ ‘subsidiary company’ has the meaning given by section 155 of the Companies Act 1963;</p> <p>(h) Substitute the following subsection for subsection (2):</p> <p>“(2) On being satisfied that it would be consistent with the orderly and proper regulation of banking to do so, the Minister may, after consulting the Bank, make an order amending the definition of ‘banking business’ in subsection (1) by—</p> <p>(a) adding a specified category of funds to that definition, or</p> <p>(b) removing a specified category of funds from that definition, or</p> <p>(c) substituting for a category of funds specified in that definition another such category.”.</p>
2.	Section 7 (as amended by section 30 of the Central Bank Act 1989)	<p>(a) Substitute the following subsection for subsection (4):</p> <p>“(4) Subsection (1) does not apply in relation to—</p> <p>(a) the central bank of any other state that is a member of the <i>European Union</i> and the European Central Bank, or</p> <p>(b) the Post Office Savings Bank, a trustee savings bank certified under the Trustee Savings Banks Acts 1863 to</p>

		<p>1979, or</p> <p>(c) a building society, an industrial and provident society, a friendly society, a credit union or the manager or trustee under a unit trust, or</p> <p>(d) a collective investment undertaking or an entity that provides services to such an undertaking, or</p> <p>(e) a member state of the <i>European Union</i>, a regional or local authority of a member state of that Union, or a public international organisation of which one or more member states of that Union is a member.</p> <p>(5) The Minister may, if satisfied that it would be in the interest of the orderly and proper regulation of banking or of any other financial market to do so, make an order amending <i>paragraph (b) of subsection (4)</i> —</p> <p>(a) by adding to the paragraph any specified body or any specified class of persons, or</p> <p>(b) by omitting from the paragraph any specified body or any specified class of persons,</p> <p>but only after consultation with the Bank and with such other Minister of the Government or other persons as the Minister considers appropriate to so consult.”</p> <p>(b) Insert the following subsection after subsection (5) (as inserted by paragraph (a));</p> <p>“(6) <i>Subsection (1)</i> does not apply to a person who acts on behalf of—</p> <p>(a) the Bank, or</p> <p>(b) the holder of a licence, or</p> <p>(c) a body or person referred to in <i>subsection (4)</i>, or</p> <p>(d) a credit institution or financial institution that is permitted by the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992, as amended) to carry on business within the State, but only so long as the institution complies with all conditions imposed on such an institution by those Regulations and by or under an Act.”.</p>
3.	Section 8 (as amended by	<p>(a) In subsection (2)(a)(i), substitute “requirement” for “requirements”;</p> <p>(b) substitute the following subsections for subsection (2):</p>

	section 31 of the Central Bank Act 1989 and section 70(d) of the Central Bank Act 1997)	<p>“(2) The Bank may exempt a specified person, or the members of a specified class of persons, from being required to hold a licence where the requirement would arise only from the creation of securities or other obligations to which the definition of ‘banking business’ relates, but only if the Bank is satisfied that the granting of the exemption would be consistent with the orderly and proper regulation of banking.</p> <p>(2A) The Bank shall revoke an exemption granted under this section if satisfied that that the circumstances relevant to the exemption have changed and are now such that the exemption would no longer be granted.</p> <p>(2B) The Bank shall publish in the <i>Iris Oifigiúil</i> a notice of every exemption and revocation under this section.”.</p>
4.	Section 15	<p>Substitute the following subsection for subsection (2):</p> <p>“(2) If, on delivery of documents under section 352 of the Companies Act 1963, or under regulation 4 or 7 of the European Communities (Branch Disclosures) Regulations 1993, it appears to the registrar of companies that the company to which those documents relate—</p> <p>(a) would be holding itself out as carrying on business as a banker in the State, or</p> <p>(b) would have as one of its objects in its memorandum of association the carrying on of banking business in the State,</p> <p>the registrar shall give written notice to the Bank about the matter.”.</p>
5.	Section 17 (as substituted by item 2 of Part 6 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	Delete subsection (5).
6.	Section 17A (as substituted by	In subsection (8), delete the definitions of “associated company”, “company”, “functions”, “holding company”, “legal practitioner”,

	item 2 of Part 6 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	“prescribed record”, “related body” and “subsidiary company”.
7.	Section 18 (as amended by section 37 of the Central Bank Act 1989 and section 8 of the Central Bank Act 1998)	<p>(a) Substitute the following subsections for subsection (1):</p> <p>“(1) This section applies to the following persons:</p> <p>(a) a person who is the holder of a licence;</p> <p>(b) any person who carries on—</p> <p>(i) a business of an associated enterprise to which <i>subsection (3)</i> relates, or</p> <p>(ii) a business in respect of which the person is, by virtue of section 7(4)(b), exempted from the obligation to hold a licence, or</p> <p>(iii) a business as an investment trust company, or</p> <p>(iv) a business as a moneybroker, or</p> <p>(v) a business as a financial intermediary, or</p> <p>(vi) a business of issuing, holding or otherwise participating in any market in financial instruments, including those to which Chapter VIII of Part II of the Central Bank Act 1989 applies.</p> <p>(1A) A person to whom this section applies shall provide the Bank, at such times as the Bank may specify from time to time, such information and returns concerning the relevant business carried on by the person as the Bank may specify from time to time.</p> <p>(1B) A person to whom this section applies shall, within such period as the Bank may specify, provide the Bank with any information or return (not being information or a return specified under <i>subsection (1A)</i>) that the Bank requests in writing concerning the relevant business carried on by the person.</p> <p>(1C) A reporting agent designated by the European Central Bank for the purposes of this section shall provide the Bank or the European Central Bank, at such times as the Bank or the European Central Bank may specify from time to time, such information and returns concerning the activities of the agent as the Bank or the European Central Bank specifies from time to time.</p>

		<p>(1D) A reporting agent designated by the European Central Bank for the purposes of this section shall, within such period as the Bank or European Central Bank may specify, provide the Bank or European Central Bank with any information or return (not being information or a return specified under <i>subsection (1C)</i>) that the Bank or European Central Bank requests in writing concerning the activities of the agent.</p> <p>(1E) The Bank may specify information or a return for the purposes of <i>subsection (1A), (1B), (1C) or (1D)</i> only if the Bank considers it necessary to have that information or return for the proper performance of the functions imposed, or the proper exercise of the powers conferred, on it by law.</p> <p>(1F) The European Central Bank may specify information or a return for the purposes of <i>subsection (1C) or (1D)</i> only if that Bank considers it necessary to have that information or return for the proper performance by that Bank of tasks and duties imposed, or the proper exercise of the powers conferred, on that Bank by or under the Rome Treaty or the ESCB Statute.”</p> <p>(b) In the definition of “moneybroker” in subsection (4), substitute “that Act;” for “that Act.”;</p> <p>(c) In subsection (4), insert the following definition after the definition of “moneybroker”: “ ‘relevant business’ , in relation to a person to whom this section applies, means—</p> <p>(a) in the case of a person who is the holder of a licence, the banking business to which the licence relates, or</p> <p>(b) in the case of a person referred to in subsection (1)(b), the business carried on by the person.”.</p>
8.	Section 27 (as substituted by section 70(e) of Central Bank Act 1997)	<p>(a) Substitute the following subsection for subsection (2):</p> <p>“(2) Subsection (1) of this section does not apply to advertising for or otherwise soliciting deposits or other repayable funds from the public—</p> <p>(a) by the holder of a licence, the Bank, or a person to whom, because of subsection (4) of section 7 of this Act, subsection (1) of that section does not apply, or</p> <p>(b) by a person to whom, because of section 8(2) of this Act, section 7(1) of this Act does not apply, or</p>

		<p>(c) by a person authorised to carry on business in the State by the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992, or</p> <p>(d) by a person on behalf of a person referred to in paragraph (a), (b) or (c) of this subsection.”;</p> <p>(b) In subsection (5), insert “or other repayable funds” after “deposits”.</p>
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PART 6

AMENDMENT OF INSURANCE (MISCELLANEOUS PROVISIONS) ACT 1985

INSURANCE (MISCELLANEOUS PROVISIONS) ACT 1985

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
1.	Section 1	Substitute the following definition for the definition of “the Minister”: “the Minister’ means the Minister for Finance.”.
2.	Sections 2 and 3	Repeal the sections.
3.	Section 4	After “attorney” insert “or proxy”, wherever occurring.
4.	Section 6	Delete “, after consultation with the Minister for Finance,”.
5.	Section 7	Delete “given after consultation with the Minister for Finance”.
6.	Section 8	Substitute the following subsection for subsection (1)”: “(1) The memorandum and articles of association of the Company must be in a form, consistent with this Act, that is approved by the Minister from time to time.”.
7.	Section 9	In subsection (2), delete “, after consultation with the Minister for Finance,”.

8.	Section 10	<p>(a) In subsection (1), delete “after consultation with the Minister for Finance”;</p> <p>(b) in subsection (2), delete “after consultation with the Minister for Finance”;</p> <p>(c) in subsection (3), delete “after consultation with the Minister for Finance”;</p> <p>(d) in subsection (4), delete “, after consultation with the Minister for Finance,”.</p>
9.	Section 14	<p>(a) In subsection (1), delete “, with the consent of the Minister for Finance,”;</p> <p>(b) in subsection (3), insert “, or the Minister for Enterprise, Trade and Employment,” after “Minister”;</p> <p>(c) in subsection (4), delete “with the consent of the Minister for Finance”;</p> <p>(d) in subsection (6), insert “, or the Minister for Enterprise, Trade and Employment,” after “Minister” wherever occurring;</p> <p>(e) in subsection (7), delete “for Finance”;</p> <p>(f) in subsection (8), insert “, or the Minister for Enterprise, Trade and Employment,” after “Minister”.</p>
	Section 15	<p>(a) In subsection (1), delete “to him by the Minister for Finance”;</p> <p>(b) in subsection (2), delete “for Finance”.</p>
	Section 17	Delete “, to such extent as may be sanctioned by the Minister for Finance,”.

PART 7

AMENDMENT OF INSURANCE ACT 1989

INSURANCE ACT 1989

<i>Item</i>	<i>Provision inserted</i>	<i>Amendment</i>
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Section 2	<p>Insert the following definition after the definition of “the Court”: ““EEA country” means a country that is a member of the European Economic Area;”.</p>
Section 11	<p>Substitute the following subsection for subsection (2): “(2) The Bank has a right to disclose any such return or document to the supervisory authority of another EEA country so long as the disclosure is <i>not prohibited</i>.”.</p>
Section 18	<p>Substitute the following subsection for subsection (3): “(3) If the head office of an undertaking is located in another EEA country, the Bank shall notify the supervisory authority of that country before issuing a direction under this section in respect of the undertaking.”.</p>
Section 20	<p>Substitute the following subsections for subsection (2): “(2) On being satisfied on reasonable grounds that a person— (a) is not suitably qualified, or is not sufficiently experienced, to hold a position as director, manager or authorised agent of an insurer, or (b) is not otherwise a fit and proper person hold such a position, the Bank may direct that, while the person holds the position, the insurer must take such of the measures specified in <i>subsection (2A)</i> as the Bank notifies in writing to the insurer. (2A) The following measures are specified for the purposes of <i>subsection (2)</i>: (a) to refrain from taking on new business, or new business of a specified type or class; (b) to limit its premium income to a specified amount; (c) to refrain from making investments of a specified class or description; (d) to realise, within a specified period, investments of a specified class or description; (e) to maintain in the State assets of a value equal to the whole, or a specified proportion of, the amount of its liabilities in respect of business carried on in the State; (f) to take such further measures as may be specified in</p>

		<p>the direction.</p> <p>(2B) The Bank may from time to time vary or revoke a direction given under this section.</p> <p>(2C) If an insurer has its head office in another EEA country, the Bank shall notify the supervisory authority of that country before issuing a direction under this section in respect of the insurer.</p> <p>(2D) On being satisfied on reasonable grounds that an insurer has not complied, or is not complying, with a direction under this section, the Bank may suspend or revoke the insurer’s authorisation in respect of any class or part of a class of business in accordance with the procedures prescribed by section 58.”.</p>
Section 22		<p>Substitute the following subsection for subsection (1E):</p> <p>“(1E) The Bank may direct a company to stop carrying on the business referred to in subsection (1), by notice in writing either indefinitely or for such period as it may specify in the direction, in all or any of the following circumstances:</p> <ul style="list-style-type: none"> (a) if the company contravenes <i>subsection (1)(b)</i> or <i>(1C)</i>, (b) if information that is, to the knowledge of the company, false or misleading is included in a notice of the company given under <i>subsection (1)(b)</i> or <i>(1C)</i>, (c) if the Bank considers that, having regard to the risks insured or proposed to be insured by the company, the company is under capitalised, or (d) if the Bank considers that one or more of the directors or the senior managers of the company are not fit and proper, or are not suitably qualified, to direct and manage the company’s business, or (e) if the Bank considers that the company has not a sufficient number of fit and proper or suitably qualified employees in the State to carry on effectively the company’s business, or (f) if the Bank has information showing that the company has engaged in unlawful activities, either within or outside the State. <p>(1EA) A direction given by the Bank to a company under <i>subsection (1E)</i> does not absolve a company from performing its</p>

		obligations in respect of the business of reinsurance carried on by it before that direction was given.”.
	Section 31	Delete subsections (3), (5) and (7).
	Section 58	(a) In subsection (3), substitute “all other EEA countries” for “any other Member State of the European Communities”; (b) Substitute the following subsection for subsection (4): “(4) If an undertaking has its head office in another EEA country, the Bank may revoke the authorisation only after consulting the supervisory authority of that other country. However, the Bank may suspend the authorisation of such an undertaking pending consulting that supervisory authority, but if the Bank does so, the Bank shall immediately notify that supervisory authority of the suspension.”.

PART 8

AMENDMENT OF CENTRAL BANK ACT 1989

CENTRAL BANK ACT 1989

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Section 50 (as substituted by item 5 of Part 9 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	In subsection (4), insert “or 268” after “section 233”.
	Section 77	Substitute the following subsection for subsection (2): (2) The Minister may give consent under subsection (1) only after consulting the Minister of Enterprise, Trade and Employment, and after being satisfied that the Bank’s proposed

		<p>decision to approve or refuse its approval—</p> <ul style="list-style-type: none"> (a) would be in the interests of orderly and proper regulation of banking, and (b) would be in the <i>public interest</i>, bearing in mind the effect of the transaction on the continued availability of financial services, both generally and on a social and geographical basis and on the capacity of the State to manage the State’s economy generally and in order to comply with its obligations under <i>European Union law</i>.”.
Section 101		<p>Substitute the following subsection for subsection (1):</p> <p>“(1) In approving rules of an existing exchange or for a proposed exchange, the Bank may impose conditions or requirements on the exchange.</p> <p>(1A) The Bank may, at any time after approving the rules of any such exchange—</p> <ul style="list-style-type: none"> (a) impose further conditions or requirements on the exchange, or (b) amend or revoke any condition or requirement imposed under this subsection or <i>subsection (1)</i>. <p>(1B) The powers conferred on the Bank by <i>subsections (1)</i> and <i>(1A)</i> are exercisable only for the purposes of securing the prudent regulation of the exchange concerned.</p> <p>(1C) The Bank may extend a condition or requirement imposed on an exchange under <i>subsection (1)</i> or <i>(1A)</i> so that the condition or requirement also applies to either or both of the following:</p> <ul style="list-style-type: none"> (a) all or any of the members of the exchange; (b) any company established in connection with a member’s membership of the exchange. <p>(1D) The Bank may not impose a condition or requirement under (1), or amend a condition or requirement imposed under <i>subsection (1)</i> or <i>(1A)</i>, unless it—</p> <ul style="list-style-type: none"> (a) has notified the exchange, and any member or company affected by the condition or requirement, or by the amendment, of its intention to impose the condition or requirement, or make the amendment, and (b) has given the exchange, and any such member or

		<p>company, the opportunity to make representations to the Bank to show why the condition or requirement should not be imposed, or the amendment should not be made.</p> <p>(1E) If securities created by the Minister could be the subject of dealings on an exchange, the Bank shall not impose a condition or requirement under subsection (1) or (1A) in relation to any such dealings without having notified the Minister of its intention to impose the condition or requirement.”.</p>
4.	Section 117	<p>Substitute the following subsections for subsection (4):</p> <p>“(4) A person supervised by the Bank who—</p> <ul style="list-style-type: none"> (a) fails to provide information in accordance with subsection (3)(a), or (b) fails to comply with a direction under subsection (3)(b), or (c) publishes, or issues a document that contains a reference to, a code of practice so as to suggest that the code has been issued or approved by the Bank when this is not the case, <p>commits an offence.</p> <p>(4A) A person who is convicted of an offence under subsection (4) is liable—</p> <ul style="list-style-type: none"> (a) on summary conviction, to a fine not exceeding €2,000, or (b) on conviction on indictment, to a fine not exceeding €40,000. <p>(4B) A person who—</p> <ul style="list-style-type: none"> (a) having been convicted of an offence under subsection (4)(a), continues to fail to provide information, or (b) having been convicted of an offence under subsection (4)(b), continues to fail to comply with the direction, <p>commits a further offence on each day, or part of a day, on which the failure continues after that conviction.</p> <p>(4C) A person who is convicted of an offence under <i>subsection (4B)</i> is for each such offence liable—</p> <ul style="list-style-type: none"> (a) on summary conviction, to a fine not exceeding €500, <p>or</p>

		(b) on conviction on indictment, to a fine not exceeding €5,000.”.
Section 139 (as amended by section 63 of the Central Bank Act 1997 and section 158 of the Finance Act 2000)	Substitute the following section: “Electronic transactions relating to securities 139.—(1) A transaction involving the issue, holding or transfer of securities may be made by electronic means and, if communicated by any of those means and recorded in an electronic payment system, is effective for all purposes without the need for instructions in writing. (2) <i>Subsection (1)</i> has effect despite anything to the contrary in any other enactment, or in any prospectus, contract or other document, relating to the issue, holding or transfer of securities. (3) In this section— ‘securities’ includes any instrument that evidences the investment of money; ‘transaction’, in relation to the issue, holding or transfer of securities, includes processing, handling, clearing and settling.”.	

PART 9

AMENDMENT OF TRUSTEE SAVINGS BANK ACT 1989

TRUSTEE SAVINGS BANK ACT 1989

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Section 24A	In subsection (3)(e), substitute “trustee savings bank or related body” for “licence holder”.

PART 10

AMENDMENT OF COMPANIES ACT 1990

COMPANIES ACT 1990

<i>Item</i>	<i>Provision inserted</i>	<i>Amendment</i>
	Section 252	In subsection (2A)(a), substitute “Central Bank” for “Bank”.

PART 11

AMENDMENT OF STOCK EXCHANGE ACT 1995**STOCK EXCHANGE ACT 1995**

<i>Item</i>	<i>Provision inserted</i>	<i>Amendment</i>
	Section 30 (as amended by item 4 of Part 19 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	(a) In subsection (5), insert “, a member of or officer of the Regulatory Authority” after “the Bank”; (b) In subsection (6), insert “, a member of or officer of the Regulatory Authority” after “the Bank”; (c) In the definition of “committee of inspection” in subsection (6B), insert “or 268” after “section 233”.
	Section 55 (as amended by item 7 of Part 19 of Schedule 1 to the Central Bank and Financial Services Authority of	In subsection (1), insert “and may, whenever appropriate, revoke the appointments of those persons” after “Act” .

Ireland Act 2003)	
Section 69	In subsection (3), insert the following paragraph after paragraph (a): “(aa) a person authorised by the Chief Executive of the Regulatory Authority;”.
The First Schedule	Substitute the following paragraph for paragraph 5: “5. (1) In addition to, or instead of, making an order under section 29(5), the Court may make such other orders as it considers appropriate. (2) The orders that the Court may make under this paragraph include (but are not limited to) an order— (a) directing a person who holds assets for the stock exchange or member firm, or a client of that exchange or firm, or (b) directing a specified person, not to dispose of those assets except in such circumstances, or in accordance with such conditions, as the Court specifies in the order.”.

PART 12

AMENDMENT OF INVESTMENT INTERMEDIARIES ACT 1995

INVESTMENT INTERMEDIARIES ACT 1995

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Section 2	In subsection (2), insert the following definitions after the definition of “proposed investment business firm”: “‘publication’ includes publication on an Internet website; ‘publish’ includes publish by means of the Internet;”.
	Section 6	Substitute the following subsection for subsection (1): “(1) The expenses incurred by the Minister in administering

		<p>this Act are payable out of money provided by the Oireachtas.”.</p>
Section 22	<p>(a) In subsection (5), insert “, or a member or officer of the Regulatory Authority” after “the Bank”;</p> <p>(b) In subsection (6), insert “, or a member or officer of the Regulatory Authority” after “the Bank”;</p> <p>(c) In the definition of “committee of inspection” in subsection (6B), insert “or 268” after section 233”;</p> <p>(d) In subsection (6B), substitute the following definition for the definition of “responsible authority”:</p> <p style="padding-left: 40px;">“responsible authority’ means—</p> <p style="padding-left: 80px;">(a) the Governor of the Bank, or</p> <p style="padding-left: 80px;">(b) the Chief Executive of the Regulatory Authority, or</p> <p style="padding-left: 80px;">(c) any person to whom the Governor of the Bank or the Chief Executive of that Authority has delegated responsibility for appointing persons under this section.”.</p>	
Section 26	<p>Substitute the following subsections for subsection (1):</p> <p style="padding-left: 40px;">“(1) A person is a restricted activity investment product intermediary for the purposes of this Act if—</p> <p style="padding-left: 80px;">(a) the only investment business service performed by the person is receiving and transmitting orders for collective scheme instruments, or receiving and transmitting—</p> <p style="padding-left: 120px;">(i) orders in shares in a company that are listed on a stock exchange or bonds so listed, or</p> <p style="padding-left: 120px;">(ii) orders in prize bonds, or</p> <p style="padding-left: 120px;">(iii) acting as a deposit agent or as a deposit broker, and</p> <p style="padding-left: 80px;">(b) in the course of performing an activity of the kind specified in <i>paragraph (a)</i>, the person transmits orders only to an entity, or an entity of a class, specified in <i>subsection (1A)</i>, and</p> <p style="padding-left: 80px;">(c) the person does not hold clients’ funds or securities in such a way as, in dealings with clients, to become indebted to those clients.</p> <p style="padding-left: 40px;">(1A) The following entities and classes of entities are</p>	

specified for the purposes of *subsection (1)(b)*:

- (a) investment firms authorised in accordance with Directive 93/22/EEC of 10 May 1993 by a competent authority of another Member State;
- (b) authorised investment business firms (other than restricted activity investment product intermediaries);
- (c) certified persons;
- (d) member firms of a stock exchange approved under the Stock Exchange Act 1995;
- (e) credit institutions authorised in accordance with Directives 77/780/EEC of 12 December 1977 and 89/646/EEC of 15 December 1989;
- (f) in relation to investment business firms and credit institutions authorised in a state other than a Member State, such branches of those firms or institutions as the supervisory authority approves from time to time;
- (g) collective investment undertakings authorised under the law of a Member State of the *European Union* to market units in collective investments to the public, and to the managers of such undertakings;
- (h) investment companies with fixed capital as defined in Article 15 (4) of Council Directive 77/91/EEC of 13 December 1976 the securities of which are listed or dealt in on a regulated market in a Member State;
- (i) the Prize Bond Company Limited, or any successor to it as operator of the Prize Bond scheme.

(1B) A person does not cease to be a restricted activity investment product intermediary for the purposes of this Act only because the person—

- (a) accepts non-negotiable cheques or similar instruments made out to a body referred to in *subsection (1A)* in connection with receiving and transmitting orders, or
- (b) when acting as a deposit agent, accepts cash from a client for the client's account with a credit institution, or
- (c) when providing services other than investment business services, holds cash on behalf of clients.”.

Section 28	<p>Substitute the following section:</p> <p>“Obligations on product producers</p> <p>28.—(1) A product producer <i>may</i> not—</p> <ul style="list-style-type: none"> (a) appoint an investment product intermediary to act on its behalf in receiving or transmitting orders for— <ul style="list-style-type: none"> (i) collective scheme instruments, or (ii) company shares or bonds, that are listed on a stock exchange, or (iii) prize bonds or in acting as a deposit agent or as a deposit broker, or (b) pay commission to an investment product intermediary, or (c) accept any orders transmitted by an investment product intermediary on behalf of a client, <p>unless to the best of the producer's knowledge, after having made reasonable enquiries, the investment product intermediary is appropriately qualified.</p> <p>(2) An investment product intermediary is appropriately qualified for the purpose of <i>subsection (1)</i> only if the intermediary—</p> <ul style="list-style-type: none"> (a) is a certified person, or (b) is of good character and is in compliance with this Act and, where the <i>product producer</i> is an insurance undertaking, is also in compliance with the Insurance Acts. <p>(3) For the purposes of <i>subsection (2)</i>, a product producer is entitled to assume that an investment product intermediary is in compliance with this Act and with the Insurance Acts if the intermediary is authorised—</p> <ul style="list-style-type: none"> (a) by the supervisory authority under section 10 or 13 to operate as an investment business firm, or (b) by a competent authority in another Member State to undertake activities similar to those undertaken by such a firm. <p>(4) A product producer who has appointed an investment product intermediary to act its agent for any purpose specified in <i>subsection (1)</i> shall monitor the activities of the intermediary so as to ensure that the intermediary complies with the requirements</p>
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		<p>imposed by or under this Act on investment product intermediaries who are appointed under this section as agents for product producers.</p> <p>(5) Whenever the supervisory authority so requests, a product producer who has appointed an investment product intermediary to act as its agent for any purpose specified in <i>subsection (1)</i> shall provide that authority with evidence in writing that the producer has complied with <i>subsection (4)</i>.</p> <p>(6) A person who, for the purpose of obtaining an appointment of the kind referred to in section 27, gives information that the person knows or ought reasonably to know is false or misleading commits an offence.</p> <p>(7) A product producer commits an offence if the producer—</p> <ul style="list-style-type: none"> (a) accepts an order transmitted by an investment business firm on behalf of a client of the firm, or (b) accepts money belonging to such a client, or (c) pays commission to the firm. <p>(8) In this section—</p> <p>‘collective investments’ means—</p> <ul style="list-style-type: none"> (a) collective investments in transferable securities within the meaning of the Regulations of 1989 (as amended from time to time), or (b) units in a unit trust, or (c) other collective scheme instruments; <p>‘commission’ includes fee and reward.’.</p>
Section 52		<p>Substitute the following subsection for subsection (6):</p> <p>“(6) If—</p> <ul style="list-style-type: none"> (a) an authorised investment business firm maintains an account with a credit institution or a financial institution, and (b) the account contains money entrusted to or received by the firm for or on account of a client, <p>the firm commits an offence if it fails to designate the account as a ‘section 52 account’ in all of its financial records. This subsection does not apply to an authorised investment business firm that is a certified person.</p>

Section 53	<p>Substitute the following subsections for subsection (1):</p> <p>“(1) This section applies to the following persons:</p> <ul style="list-style-type: none"> (a) the supervisory authority; (b) employees and officers of that authority; (c) the members of any Board of that authority; (d) the members of any committee appointed under section 74; (e) the Regulatory Authority; (f) members, officers and employees of the Regulatory Authority. <p>(1A) A person to whom this section applies of this Act is not liable in damages for anything done or omitted to be done in performing its functions under this Act unless it is proved shown that the act was done or omitted in bad faith.”.</p>
Section 58	<p>Substitute the following subsections for subsection (1):</p> <p>“(1) If the Bank grants approval under section 56, or consents to a proposed amendment to a memorandum or article of association or rules, it may, in the interests of the proper and orderly regulation and supervision of approved professional bodies or certified persons or both, also do all or any of the following:</p> <ul style="list-style-type: none"> (a) make its approval or consent subject to such conditions or requirements as it considers fit; (b) impose conditions or requirements that relate to matters in an associated undertaking or related undertaking; (c) at any time after approving a professional body, impose conditions or requirements on the body; (d) amend or revoke a condition or requirement imposed under this subsection; (e) at any time after approving a professional body, impose a requirement that the body amend or revoke rules of the body where those rules relate to the provision of investment business services or investment advice by certified persons or the regulation and supervision of certified persons; (f) where applicable, at any time after approving a

		<p>professional body, impose a requirement that the body amend any memorandum of association or articles of association of the body.</p> <p>(1A) The Minister may, from time to time in the interests of the proper and orderly regulation and supervision of approved professional bodies or of <i>certified persons</i> issue guidelines to the Bank with respect to the imposition by the Bank of conditions and requirements under <i>subsection (1)</i>. However, the Minister is required to obtain the consent of the Minister for Justice before issuing any such guidelines that relate to an approved body of lawyers.</p> <p>(1B) As soon as practicable after issuing guidelines under <i>subsection (1A)</i>, the Minister shall arrange for them to be notified in the <i>Iris Oifigiúil</i>. Failure to comply with this subsection does not affect the validity of the guidelines concerned.</p> <p>(1C) When imposing a condition or requirement under <i>subsection (1)</i>, or amending such a condition or requirement, the Bank shall comply with any guidelines issued to it under <i>subsection (1A)</i>.”.</p>
	Section 60	<p>Substitute the following subsection for subsection (2):</p> <p>“(2) Not later than 3 months after beginning to determine an appeal under this section, the Minister shall consult with the Bank, the professional body concerned and, where appropriate, the Minister for Justice, Equality and Law Reform.”.</p>
	Section 64	<p>(a) In subsection (1), insert “and may, whenever appropriate, revoke the appointments of those persons” after “Act”;</p> <p>(b) In subsection (4), substitute the following subsection:</p> <p>“(4) In this section, ‘responsible authority’ means—</p> <ul style="list-style-type: none"> (a) the Governor of the Bank, or (b) the Chief Executive of the Regulatory Authority, or (c) any person to whom the Governor of the Bank or the Chief Executive of that Authority has delegated responsibility for appointing persons under this section.”.
	Section 71	<p>Substitute the following subsection for subsection (4):</p>

		<p>“(4) The Minister may lay before each House of the Oireachtas a report forwarded under subsection (2) if the Minister thinks it proper to do so having regard to the public interest and the rights of any person referred to in the report. A report laid under this subsection is privileged.”.</p>
	Section 78	<p>In subsection (3), insert the following paragraph after paragraph (b):</p> <p>“(ba) a person authorised by the Chief Executive of the Regulatory Authority;”.</p>
	Section 79	<p>Substitute the following subsection for subsection (1):</p> <p>“(1) A person who is found guilty of an offence under section 9, 10(16), 16(9), 19(1)(b), 21(5), 23(1), 23(15), 28 [?], 30, 34(1), 34(3), 35(4), 36(13) and (14), 46(2), 52(3), 52(5), 52(6), 52(9), 54(6), 56(9), 75(3), 78(2), 79(4), 79(7), 79(8) of, or paragraph 15 of the Second Schedule to, this Act is liable—</p> <p>(a) on summary conviction to a fine not exceeding €1,250 or, in the case of a natural person, to imprisonment for a term not exceeding 12 months, or both, or</p> <p>(b) on conviction on indictment, to a fine not exceeding €1,250,000 or, in the case of a natural person, to imprisonment for a term not exceeding 10 years, or both.”.</p>
	The First Schedule	<p>Substitute the following paragraph for paragraph 5:</p> <p>“5. (1) In addition to, or in stead of, making an order under section 21(5), the Court may make such other orders as it considers appropriate.</p> <p>(2) The orders that the Court may make under this paragraph include (but are not limited to) an order directing—</p> <p>(a) any person who holds assets for the investment business firm or client of the investment business firm concerned, or</p> <p>(b) a specified person,</p> <p>not to dispose of any of those assets except on such conditions, and in such circumstances, as are specified in the order.”.</p>

PART 13

AMENDMENT OF CONSUMER CREDIT ACT 1995

CONSUMER CREDIT ACT 1995

<i>Item</i>	<i>Provision inserted</i>	<i>Amendment</i>
	Section 2	<p>(a) In subsection (1), substitute the following definition for the definition of “consumer”:</p> <p>“ ‘consumer’ means—</p> <p style="padding-left: 40px;">(a) a natural person acting outside the person’s business, or</p> <p style="padding-left: 40px;">(b) any person, or person of a class, prescribed by the regulations for the purposes of this definition;”;</p> <p>(b) In subsection (1), substitute the following definition for the definition of “mortgage intermediary”:</p> <p>“ ‘mortgage intermediary’ means a person (other than a mortgage lender or credit institution) who, in return for commission or some other form of consideration—</p> <p style="padding-left: 40px;">(a) arranges, or offers to arrange, for a mortgage lender to provide a consumer with a housing loan, or</p> <p style="padding-left: 40px;">(b) introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with such a loan;”;</p> <p>(c) In subsection (1), substitute the following definition for the definition of “mortgage lender”:</p> <p>“ ‘mortgage lender’ means—</p> <p style="padding-left: 40px;">(a) a credit institution that makes housing loans, or</p> <p style="padding-left: 40px;">(b) a holder of an authorisation granted under Part VA of the Central Bank Act 1997, or</p> <p style="padding-left: 40px;">(c) any other person of a class that is prescribed by the regulations for the purposes of this Act, after consultation with the Minister for the Environment;”;</p>

PART 14

AMENDMENT OF NETTING OF FINANCIAL CONTRACTS ACT 1995

NETTING OF FINANCIAL CONTRACTS ACT 1995

<i>Item</i>	<i>Provision inserted</i>	<i>Amendment</i>
	Section 1	In the definition of “financial contracts” in section 1, substitute the following paragraph for paragraph (g): “(g) contracts designated by regulations made under section 3.”.

PART 15

AMENDMENT OF CENTRAL BANK ACT 1997

AMENDMENT OF CENTRAL BANK ACT 1997

<i>Item</i>	<i>Provision inserted</i>	<i>Amendment</i>
	Section 75 (as amended by item 5 of Part 23 of the Central Bank and Financial Services Authority of Ireland Act 2003)	In subsection (1), substitute the following definition for the definition of “responsible authority”: “‘responsible authority’ means the Chief Executive of the Irish Financial Services Regulatory Authority.”.
	Section 76	Insert the following subsection after subsection (2): “(3) In this section, “appropriate person” has the same meaning as it has in section 75.”
	Section 77	In subsection (1), insert “or constituent part” after “subsidiary”.

PART 16

AMENDMENT OF CREDIT UNION ACT 1997

AMENDMENT OF CREDIT UNION ACT 1997

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Section 114 (as amended by item 77 of Part 24 of the Central Bank and Financial Services Authority of Ireland Act 2003)	(a) In subsection (1)(a), substitute “the Minister for Enterprise, Trade and Employment” for “the Minister”; (b) In subsection (1)(b), substitute “that Minister” for “the Minister”.

PART 17

AMENDMENT OF INVESTOR COMPENSATION ACT 1998

AMENDMENT OF INVESTOR COMPENSATION ACT 1998

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Section 2	(a) In subsection (1), substitute the following definition for the definition of “administrator”: “ ‘administrator’ means— (a) in relation to an investment firm in respect of which the Court has appointed a liquidator or the official assignee, the person appointed as administrator by the Court as a result of a proposal by the supervisory authority, or

		<p>(b) in relation to an investment firm in respect of which the supervisory authority has appointed a person as administrator, that person;”.</p> <p>(b) In subsection (1), insert the following definition after the definition of “close relative”:</p> <p>“‘Companies Acts’ means the Companies Act 1963 as amended from time to time, and includes all Acts that are to be construed together with that Act as one Act;”;</p> <p>(c) Substitute the following subsection for subsection (5):</p> <p>“(5) A firm is not an investment business firm, or authorised as such, for the purposes of this Act if—</p> <p>(a) the only activity that the firm is authorised to carry on under the Investment Intermediaries Act 1995 is the provision of investment business services, and</p> <p>(b) the firm is not an investment firm within the meaning of the Investor Compensation Directive.”.</p>
	Section 20	<p>Insert the following subsections after subsection (2):</p> <p>“(3) The Company is responsible only for the expenses of an administrator that are properly incurred in the course of performing the administrator’s functions under this Act.</p> <p>(4) The Company is not responsible for expenses incurred by an administrator of an investment firm if the administrator is also the liquidator of the firm. This subsection has effect even if those expenses are incurred only in relation to the performance of the functions of the administrator.”.</p>
	Section 21	<p>In subsection (3)(b), substitute “Investment Compensation Directive” for “Investment Services Directive”.</p>
	Section 32	<p>In subsection (1)(b), substitute the following paragraph for paragraph (b):</p> <p>“(b) a court has made a ruling (other than a decision under the Companies Acts appointing an examiner or provisional liquidator),”.</p>
	Section 33	<p>(a) Substitute the following subsections for subsection (3):</p> <p>“(3) The administrator shall deliver to the Company, or, where</p>

		<p>appropriate, to the operator of the compensation scheme concerned—</p> <p>(a) a statement, or</p> <p>(b) if an interim statement is delivered under <i>subsection (3B)</i>, a final statement,</p> <p>specifying the names of eligible investors and the net loss (if any) and the net compensable lost (if any) of each of those investors.</p> <p>(3A) As a prelude to complying with <i>subsection (3)</i>, the administrator may, if the Company so agrees, deliver an interim statement specifying names of eligible investors and the net losses and compensable losses of those investors.</p> <p>(3B) On, or as soon as practicable after, delivering a statement in accordance with <i>subsection (3)</i> or <i>(3A)</i>, the administrator shall deliver a copy of the statement to the supervisory authority.”.</p>
	Section 34	<p>Substitute the following subsection for subsection (3):</p> <p>“(3) If the administrator has delivered an interim statement in accordance with <i>section 34(3A)</i>, the Company or operator of the compensation scheme concerned may make provisional compensation payments under this section on the basis of that statement. If, in relation to an eligible investor, the amount of compensation paid on the basis of that statement is less than that specified in the final statement delivered in accordance with <i>section 33(3)</i>, the Company or operator of the compensation scheme concerned shall make a further compensation payment to the investor in respect of the outstanding balance.”.</p>
	Section 35	<p>(a) Insert the following subsection after subsection (5):</p> <p>“(5A) If—</p> <p>(a) an eligible investor proves a claim in the liquidation proceedings referred to in subsection (5), and</p> <p>(b) the amount proved exceeds the amount of compensation paid by the Company, or by the operator of an investor compensation scheme approved under <i>section 25</i>,</p> <p>the amount of the excess and the subrogated claim of the Company or the compensation scheme rank equally in those</p>

		<p>proceedings.”.</p> <p>(b) Insert the following subsection after subsection (6):</p> <p>“(6A) If—</p> <p>(a) an eligible investor proves a claim under a bond or policy of professional indemnity insurance referred to in subsection (6), and</p> <p>(b) the amount proved exceeds the amount of compensation paid by the Company, or by the operator of an investor compensation scheme approved under section 25,</p> <p>the amount of the excess and the subrogated claim of the Company, or the operator of the compensation scheme, rank equally in those proceedings.”.</p>
Section 36		<p>Substitute the following section:</p> <p>“Provisions relating to investment product intermediaries</p> <p>36.—(1) A product producer from whom an investment product intermediary held a valid written appointment shall, in respect of each eligible investor to whom the Company is liable to make a payment in respect of the intermediary under section 34, pay to the Company an amount calculated as follows:</p> $A = \frac{ICL}{INL} \times RAV$ <p>where—</p> <p>‘A’ represents the amount to be calculated;</p> <p>‘ICL’ represents the investor’s compensable loss;</p> <p>‘RAV’ represents the amount of client money or the value of investment instruments forming part of the net loss of the investor that were entrusted by the investor to an investment product intermediary for transmission to an identifiable product producer from whom the intermediary held a valid written appointment when the money was, or the investment instruments were, so entrusted;</p> <p>‘INL’ represents the net loss of the eligible investor.</p> <p>(2) Product producers are to be subrogated to the Company with respect to claims of the Company against an investment firm</p>

		<p>in relation to money that product producers have paid to the Company under this section.</p> <p>(3) Nothing in a contract limits or varies the liability of a product producer under this section.”.</p>
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SCHEDULE 2

Section 21.

AMENDMENT OF EUROPEAN COMMUNITIES REGULATIONS

PART 1

AMENDMENT OF EUROPEAN COMMUNITIES (CONSOLIDATED SUPERVISION OF CREDIT INSTITUTIONS) REGULATIONS 1992 (s.i. NO. 396 OF 1992)

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Regulation 2	<p>(a) In subsection (1), substitute the following definition for the definition of “associated enterprise”:</p> <p>“ ‘associated enterprise’, in relation to a credit institution, means—</p> <ul style="list-style-type: none"> (a) a holding company of the institution, or (b) a subsidiary company of the institution, or (c) a company that is a subsidiary of a body corporate, if the institution is also a subsidiary of the body, but neither company is a subsidiary of the other, or (d) if a credit institution is a company, any other body corporate that is not a subsidiary of the company but in respect of which the company is beneficially entitled to more than 20 per cent of the nominal value of either— <ul style="list-style-type: none"> (i) the allotted share capital, or (ii) the shares carrying voting rights (other than voting rights which arise only in specified circumstances) in that other body corporate, or (e) a partnership in which the institution has an interest, and whose business is or, at the relevant time, was, in the opinion of the Bank, materially relevant to any

		<p>inspection of the institution being carried out or proposed to be carried out under this section;”;</p> <p>(b) In subsection (1), insert the following definitions after the definition of “the Directive”:</p> <p>“‘holding company’ has the meaning given by section 155 of the Companies Act 1963;</p> <p>‘subsidiary company’ has the meaning given by section 155 of the Companies Act 1963.”.</p>
	Regulation 4	<p>Substitute the following regulation:</p> <p>“4. (1) A reference to functions in sections 17 and 18 of the Act of 1971 (as amended by sections 36 and 37 of the Central Bank Act 1989) includes a reference to any function imposed on the Bank by these Regulations and the Directive.</p> <p>(2) In relation to any investigation or inspection carried out, or any information, document, report or other material or explanation required, by the Bank for the purposes of performing a function imposed on it by these Regulations or the Directive, the Bank has and may exercise the same powers as are conferred on the Bank by section 41 of the Building Societies Act 1989 in relation to—</p> <p>(a) investigating or inspecting the state and conduct of the business of a building society, or a corporate body that is a subsidiary or associated body of a society, or any particular aspect of that business, or</p> <p>(b) requiring a society or other body corporate to provide the Bank with information, documents, reports or other material or explanations under section 41 of that Act.”.</p>

PART 2

AMENDMENT OF EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2003 (S.I. NO. 211 OF 2003)

<i>Item</i>	<i>Provision affected</i>	<i>Amendment</i>
	Regulation	(a) In paragraph (5), substitute “(4)” for “(1)”;

	98	(b) In paragraph (6), substitute “(3), (4) and (5)” for “(3) and (4)”.
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SCHEDULE 3

Section 22.

SAVINGS AND TRANSITIONAL PROVISIONS

[To be completed. See the notes to the amendments contained in the preceding Schedules.]

**CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND BILL, 2003:
EXPLANATORY MEMORANDUM**

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BILLE AN BHAINC CEANNAIS AGUS ÚDARÁS SEIRBHÍSÍ AIRGEADAIS NA hÉIREANN, 2003

CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND BILL 2003

EXPLANATORY MEMORANDUM

OVERVIEW

This Bill is complementary to the *Central Bank and Financial Services Authority of Ireland Act, 2003*. The Act established the *Irish Financial Services Regulatory Authority* to oversee the activities of financial institutions, including their treatment of customers.

This Bill provides for:

- Establishment of a Financial Services Ombudsman, to deal with consumer complaints about financial institutions
- Establishment of Consumer and Industry Consultative Panels to advise the Regulatory Authority
- New reporting and auditing obligations for financial institutions
- Power for the Regulatory Authority to impose sanctions directly on financial institutions for failure to comply with regulatory requirements
- New regulatory requirements for money transmission services and *bureaux de change*
- New regulatory requirements for financial institutions providing housing loans
- Miscellaneous amendments to financial services legislation

The greater part of the Bill is based on the recommendations of the *Report of the Implementation Advisory Group on the establishment of a Single Regulatory Authority for the Financial Services Sector* (McDowell Report). The new reporting and auditing requirements for financial institutions are based on the recommendations of the *Review Group on Auditing* which relate specifically to financial institutions (the general recommendations of the Group are dealt with in the *Companies (Auditing and Accounting) Bill, 2003*.) The new regulatory requirements for money transmission services and *bureaux de change* implement recommendations of the *Financial Action Task Force* - an OECD-related body - on prevention of the financing of terrorism.

The miscellaneous amendments are mainly technical in nature, correcting errors and flaws in existing financial services legislation. The main substantive amendments are:

- The Consumer Credit Act 1995 is being amended by way of an enabling provision to allow the Minister to extend some or all of the provisions of that Act to lending to non-personal consumers
- The Consumer Credit Act 1995 is being amended by way of a replacement definition for 'mortgage intermediary' to bring 'introducers' - people who,

although not authorised as mortgage intermediaries in their own right, introduce clients to authorised intermediaries in return for a commission - within the scope of the Act

- Section 77 of the Central Bank Act 1989 – relating to the approval of mergers and acquisitions in the banking sector above a certain threshold - is being expanded to elaborate on the criteria that the Minister would use to inform any decision made under this provision.
- The right of an Administrator - appointed to an insurance company in difficulty under the terms of the Insurance Acts - to have access to the Insurance Compensation Fund is being restored

STRUCTURE

The main substantive provisions of the Bill are structured as new Parts of existing Central Bank Acts, in line with the approach taken in the *Central Bank and Financial Services Authority of Ireland Act, 2003*. The miscellaneous amendments to financial services legislation are set out in Schedules to the Bill.

Provisions

PART 1 PRELIMINARY

This Part, consisting of 1 Section, gives the short title of the Bill and includes the usual provisions about commencement of its provisions.

PART 2

AMENDMENT OF CENTRAL BANK ACT 1942

This Part, consisting of 2 sections, sets out new definitions that need to be inserted in the Central Bank Act, 1942, to accommodate the new provisions being inserted by this Bill. The new provisions are then set out in a series of Sections that add new Parts to the 1942 Act ('the Principal Act')

ENFORCEMENT OF DESIGNATED ENACTMENTS AND DESIGNATED
STATUTORY INSTRUMENTS
(Section 4, inserting new Part IIIC into Principal Act)

Overview

The main provisions are contained in Section 4 of the Bill, which inserts a new Part IIIC into the Central Bank Act, 1942.

This provides that, where a financial service provider breaches a requirement of an Act, Regulation or Code of Conduct, the Regulatory Authority – as an alternative to Court proceedings – will have the right to use the sanction mechanisms set out in this Part. In order to satisfy the requirements of natural justice, provision is made for a separation of investigation and determination, with the latter being entrusted to a Panel appointed by the Authority. The Authority is obliged to confirm (or otherwise) the decisions of the Panel before they have effect.

The sanctions that may be imposed on a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €250,000¹
- Order to pay the costs of the investigation

The sanctions that may be imposed on a director/manager of a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €100,000²
- Disqualification from being involved in the management of a financial service provider
- Order to pay the costs of the investigation

A right of appeal to the Appeals Tribunal (put in place by the CBFSAI Act as a new Part VIIA of the Central Bank Act, 1942) is provided for³.

Details

The Part is structured into 17 Sections and a Schedule.

¹ Or such higher or lower amount prescribed by regulations made by the Minister (under section 61A of the 1942 Act)

² Or such higher or lower amount prescribed by regulations made by the Minister (under section 61A of the 1942 Act)

³ Separately, existing sectoral legislation is being amended to substitute the Appeals Tribunal for the Court in relation to appeals against supervisory decisions of the Authority (notably to refuse, withdraw or restrict a licence or authorisation). The result will be to eliminate the right of a financial institution to appeal directly to the Court against any decision of the Authority, whether it's a supervisory decision or the imposition of a penalty, but with a full right of appeal from the Appeals Tribunal's decision to the Court

Section 33AN: Interpretation

This provides for the necessary definitions in this Part. The definition of ‘allegation’ is deliberately broad. It encompasses a suspicion by an officer of the Authority or an employee of the Bank (IFSRA) that a contravention has occurred, as well as an allegation from a 3rd party. The contraventions covered by the definition include contravention of a provision of any of the enactments or statutory instruments listed in Schedule 2 to the 42 Act (as inserted by the CBFSAI Act) as well as “any condition or requirement imposed under such a provision”. A definition of ‘regulated financial service provider’ will be provided elsewhere in the CBFSAI Bill.

Section 33AO: Establishment of Regulatory Authority Sanctions Panel

This provides for the Authority to establish a Panel of 6-9 persons, who may be drawn either from within the Authority structure or from expert outsiders. The Panel is constituted as a committee of the Authority. One member is to be designated as convener of the Panel, another as deputy convener.

Section 33AP: Reference of allegation to Panel

This provides for reference of an allegation to the Panel where the Authority is of the opinion that an inquiry should be held. The convener is required to designate 3 members of the Panel to deal with the allegation; neither of these can have been involved in the investigation of the allegation. Either the convener or deputy convener is to chair the inquiry.

Section 33AQ: Convener to serve notice of inquiry on regulated financial service provider concerned

This sets out the details of the notice that the convener must serve on the financial service provider.

Section 33AR: Panel to inquire into Allegation

This provides that the panel shall hold an inquiry into an allegation and that a financial service provider who does not wish to attend has the option of making a written submission.

Section 33AS: Proceedings at inquiries

This provides that the enquiry is to be conducted with minimum formality but that the Authority and the financial service provider have the right to be assisted by a lawyer.

Section 33AT: Inquiry normally to be held in public

This provides for the inquiry to be held in public unless the Panel considers that issues of confidentiality or of personal reputation justify otherwise.

Section 33AU: Power to summon witnesses and take evidence

This gives the Chair of an inquiry the power to summon a witness, to require her/him to answer questions, including on oath, and to permit a witness to provide a written statement.

Section 33AV: Decisions of Panel

The sanctions that may be imposed on a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €250,000⁴
- Order to pay the costs of the investigation

The sanctions that may be imposed on a director/manager of a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €100,000⁵
- Disqualification from being involved in the management of a financial service provider
- Order to pay the costs of the investigation

Section 33AW: Offence for regulated financial service provider to employ disqualified person

It is an offence, punishable by the Court, for a financial service provider to employ a person subject to a disqualification order.

Section 33AX: Panel to deliver decision to Regulatory Authority for confirmation

The Regulatory Authority can:

- Confirm a decision of the Panel
- Remit the decision to the Panel for further consideration
- Quash the decision and substitute its own decision, for stated reasons

A Panel decision that is confirmed by the Authority is to be regarded as a decision of the Authority.

Section 33AY: Notification and publication of decision

The Authority must publish its decision and details of any sanction imposed.

Section 33AZ: Decision to be appealable

This defines a decision of the Authority as an ‘appealable decision’ for the purposes of Part VIIA (Appeals Tribunal) of the Act.

Section 33BA: Regulated financial service provider or person not to be liable twice for same contravention

This provides that a financial service provider or a director/manager who is penalised under this Part may not be prosecuted before the Courts, and vice-versa.

⁴ Or such higher or lower amount prescribed by regulations made by the Minister

⁵ Or such higher or lower amount prescribed by regulations made by the Minister

Section 33BB: Enforcement of orders imposing a monetary penalty

The Authority may take Court proceedings to recover as a debt a monetary penalty imposed under Section 33AV.

Section 33BC: Reference to Court of question of law arising at inquiry

The Panel may, on its own initiative or at the request of a financial service provider or other person concerned, refer a point of law to the Court. It may not make a decision on the relevant case until the Court has given its opinion; the decision must be consistent with the Court's opinion.

Section 33BD: Protection of members of Panel

Members of the Panel, legal practitioners and witnesses have the same protection as applies in the High Court.

Schedule 4A: Provisions applicable to Members of the Regulatory Authority Sanctions Panel

These cover:

- Appointment of an Acting Convenor (par. 1)
- Members to hold office for 5 years and to be eligible for reappointment (par.2)
- The Authority may pay fees and expenses to Members (par.3)
- A person ceases to be a Member in the circumstances specified and can be removed by the Authority on the grounds of proven misbehaviour or incapacity (par.4)
- The Authority is required to fill a vacancy in the Panel within 60 days (par.5)
- A person ceases to be convenor or deputy convenor if they cease to be a Panel member (par.6)
- The Authority is required to appoint a new convenor or deputy convenor 'as soon as practicable'(par.7)
- A person whose term of office has expired may continue to participate in an inquiry in which they were involved before their term of office expired (par.8)
- If a Member has a conflict of interest in relation to a particular inquiry, s/he must disclose this to the parties involved and may only take part in the enquiry with their consent; the Convenor is under an obligation to take action in such a case if the Member does not do so voluntarily; but failure to comply with these requirements does not of itself invalidate a Panel decision (par.9)

FINANCIAL SERVICES OMBUDSMAN
(Section 8, inserting new Part VIIB into Principal Act, and Section 12, inserting Schedules 6 and 7 into Principal Act)

Overview

The provisions are contained in Section 8 of the Bill, which inserts a new Part VIIB into the Central Bank Act, 1942, and Section 12, which inserts 2 new Schedules (6 and 7) into that Act.

Part VIIB provides for the establishment of an independent statutory Financial Services Ombudsman scheme to deal with consumer complaints against financial service institutions. The main features of the scheme are:

- Comprehensive coverage of complaints from personal consumers against all types of financial services providers, including banks, insurance companies, credit unions⁶ and intermediaries (brokers), with provision for extension of the scheme to complaints from non-personal consumers
- Bureau overseen by a Council, appointed by the Minister, composed of persons with consumer and industry backgrounds
- Council to appoint Financial Services Ombudsman and Deputy Ombudsmen and to make detailed regulations governing the scheme
- Ombudsman to be fully independent in making decisions on individual complaints
- Scheme funded by levies/charges on financial service providers
- Scheme independent of the Regulatory Authority, but with provision for close cooperation
- Enabling provision for existing non-statutory Insurance and Credit Institutions Ombudsmen, and their staffs, systems etc to be absorbed into the statutory Scheme, with current Insurance and Banking Ombudsmen being designated by the Minister as Deputy Ombudsmen-designate under the statutory Scheme
- Determinations of ombudsman to be binding on financial institutions, subject to their right to appeal to the High Court
- Maximum transparency in operations, including regular published reports, accountability to Oireachtas committee etc

Details

The Part is structured into 8 Chapters, with 2 Schedules.

CHAPTER 1: Interpretation: Part VIIB

This provides for the necessary definitions in this Part⁷.

⁶ Separately Part VIII of the Credit Union Act is being amended to bring complaints against credit unions unambiguously within the remit of the Ombudsman

⁷ Other definitions are included elsewhere in the Bill. Of particular significance is the definition of 'consumer': *consumer* means a person who uses, or seeks to use, a service provided by a regulated financial service provider, but, except to the extent that the regulations so provide, does not include a body corporate or business firm. The definition of 'financial service provider' for the purposes of this

CHAPTER 2: Financial Services Ombudsman Council

This provides for a Council of up to 10 persons who are to be appointed by the Minister for Finance, following consultation with the Minister for Enterprise, Trade & Employment.⁸ The members are to be drawn from those with knowledge or experience of consumer issues relating to the provision of financial services and those with knowledge or experience of the financial services industry. The functions of the Council are specified to be:

- to prescribe guidelines under which the Financial Services Ombudsman is to operate,
- to determine the levies and charges payable for the performance of services provided by the Financial Services Ombudsman⁹
- to appoint the Financial Services Ombudsman and all Deputy Financial Services Ombudsmen
- to keep under review the efficiency and effectiveness of the Bureau and to advise the Minister, either at the Minister's request or on its own initiative, on any matter relevant to the operation of the Bureau
- to advise the Ombudsman on any matter on which the Ombudsman seeks advice
- to carry out such other activities as are prescribed by this Part.

The Council is given power to make regulations prescribing levies and fees to be paid by financial institutions (provision is also made for charging fees to complainants, if the Council so decides). Regulations made by the Council may also prescribe detailed provisions governing the eligibility and processing of complaints and other matters. The Council Chairperson (appointed by the Minister) is obliged to provide the Minister with reports on request and to appear on request before an Oireachtas Committee. Details provisions on the operation of the Council are set out in Schedule 6.

CHAPTER 3: Financial Services Ombudsman's Bureau

This sets out general rules concerning the appointment, powers and immunities of the Ombudsman, Deputy Ombudsmen and staff of the Bureau. It includes provision for confirmation of the appointment of an Ombudsman-designate or Deputy Ombudsman-designate that may have been appointed before the Bill is enacted. Detailed provisions on the operation of the Bureau are set out in Schedule 7.

CHAPTER 4: Accounts and Reports

This sets out the obligation of the Ombudsman to:

- Keep proper accounts which are to be audited by the Comptroller & Auditor General

Part covers institutions providing financial services on a 'freedom-of-services' basis from another EEA State (but with provision for referring complaints in relation to them to the Ombudsman in the 'home' State in accordance with the EEA Memorandum of Understanding referred to in Chapter 8).

⁸ If the Minister decides to appoint an Interim Council in advance of enactment of the legislation, provision can be made via transitional provisions for it to become the statutory Council.

⁹ Section 57 BD (3)(g) provides that Council regulations may make provision for *the collection and recovery of levies and fees*. This would permit the Council to enter into an agency agreement with IFSRA in relation to the collection of levies.

- Prepare an annual estimate of income and expenditure
- Prepare each year (and publish) a strategy statement, annual report and report summarising cases
- Appear on request before an Oireachtas Committee

CHAPTER 5: How Consumer Complaints are to be dealt with

This sets out, in general terms, how complaints are to be dealt with. Detailed requirements may be set out in Regulations made by the Council. It includes provision for:

- A ‘one-stop-shop’ for all consumer complaints against financial institutions, with complaints being referred, as appropriate, to the Ombudsman or/and the Regulatory Authority¹⁰
- A financial institution must be given a reasonable opportunity to resolve a complaint before the Ombudsman considers it
- Grounds on which the Ombudsman must or may decline to deal with a complaint – for example, that it is the subject of legal proceedings, occurred too far in the past or is frivolous
- The Ombudsman is to encourage and facilitate agreed solutions to complaints
- Where an agreed solution is not possible, the forms of redress that the Ombudsman may direct a financial institution to provide (e.g. to do, or cease to do, something or to provide financial compensation)
- The Ombudsman’s power to direct a financial institution to provide any information necessary for an investigation and to enter the institution’s premises for this purpose
- The Ombudsman may apply to the Court to secure enforcement of her/his decisions

Provision is also made for continuity with investigations being carried out by the existing voluntary ombudsman schemes or by the Regulatory Authority.

CHAPTER 6: References and Appeals under this Part to the High Court

This gives both a complainant and a financial institution a right of appeal to the High Court against a determination of the Ombudsman. There is also provision for the Ombudsman to refer a point of law to the High Court.

CHAPTER 7: Supplementary Provisions

This covers:

- Protection in respect of information provided to the Ombudsman

¹⁰ The details are set out in Section 57BW, subsections 6 to 9. These provide that the Ombudsman must copy to IFSRA each complaint received and that IFSRA must refer to the Ombudsman complaints within his jurisdiction. Subsection (7) gives the Ombudsman power to *enter into an arrangement with a person under which that person will receive complaints on behalf of that Ombudsman*. This leaves it up to the Ombudsman and IFSRA to work out the details of the ‘one-stop-shop’.

- Power of the Ombudsman to seek a High Court injunction against a financial institution in certain circumstances
- Requirement on the Ombudsman to cooperate with the Regulatory Authority *with a view to ensuring that the provisions of this Part operate in a way that contributes to promoting the best interests of users of financial services*

CHAPTER 8: Reciprocal Arrangements with corresponding Agencies of other EEA countries

This provides that the Ombudsman may subscribe to the EEA *Memorandum of Understanding on a Cross-Border Out-of-Court Complaints Network for Financial Services in the European Economic Area* to facilitate customers with complaints against institutions providing services on a cross-border basis. The Ombudsman can, in accordance with the terms of the Memorandum, refer appropriate complaints to dispute settlement bodies in other EEA countries and deal with complaints referred by them to her/him.

CONSULTATIVE PANELS

(Section 9, inserting a new Part VIIB into Principal Act, and Section 13, inserting a new Schedule 8 into that Act)

Overview

The provisions are contained in Section 9 of the Bill, which inserts a new Part VIIB into the Central Bank Act, 1942, and Section 13, which inserts a new Schedule 8 into that Act.

Part VIIB provides for the appointment by the Minister, following consultation with the Minister for Enterprise, Trade & Employment, of separate Consumer and Industry Consultative Panels to advise the Regulatory Authority. Specific provisions include:

- The Authority is obliged to consult both Panels before issuing general regulations, directives or codes
- The Minister is obliged to consult both Panels before approving the Authority's annual budget
- The Authority is obliged to publish Panel reports and recommendations
- The Authority is obliged to publish its reasons for not accepting Panel recommendations
- Each Panel must produce an annual report
- The Chairperson of each Panel is obliged to appear, on request, before an Oireachtas Committee
- The Panels, separately or jointly, may appoint Advisory Groups to deal with specific issues.

Details

The Part is structured into 4 Chapters, with 1 Schedule.

CHAPTER 1: General

This lays down necessary definitions and provides for the Authority to establish and maintain the two Consultative Panels.

CHAPTER 2: Consultative Consumer Panel

This provides for the members of the Panel – minimum of 5, maximum of 20 - to be appointed by the Minister, following consultation with the Minister for Enterprise, Trade & Employment and organisations representing consumers. The functions of the Panel are stated to be:

- to monitor the performance by the Regulatory Authority of its functions and responsibilities under the Act
- to monitor the activities of the Consumer Director
- to monitor the activities of the Registrar of Credit Unions, so far as those activities affect consumers
- to provide the Regulatory Authority with comments with respect to the performance of its functions and responsibilities

- to provide the Regulatory Authority with suggestions for initiatives that, in the Panel's opinion, that Authority should take with respect to the performance of its functions and responsibilities
- when the Regulatory Authority so requests, to comment on legislative documents that that Authority proposes to make or issue;
- to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year

The Authority is obliged to provide the Panel with such administrative services and funds as it judges to be necessary to enable the Panel to perform its functions. It is also obliged to arrange for the attendance of appropriate officials at meetings of the Panel.

CHAPTER 3: Consultative Industry Panel¹¹

This provides for the members of the Panel - not fewer than 5, not more than 20 - to be appointed by the Minister, following consultation with the Minister for Enterprise, Trade & Employment and organisations representing financial service providers.

The functions of the Panel are stated to be:

- when the Regulatory Authority so requests, to provide that authority with comments on legislative documents that that Authority proposes to make or issue
- to provide the Regulatory Authority with comments on levies and fees that that Authority proposes to prescribe under section 33J or 33K
- to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year
- to provide the Regulatory Authority with comments on the impact that the conditions and restrictions imposed by that Authority on financial service providers have on the competitiveness of those providers.

The Authority is obliged to provide the Panel with such administrative services as it judges to be necessary to enable the Panel to perform its functions. It is also obliged to arrange for the attendance of appropriate officials at meetings of the Panel.

CHAPTER 4: Provisions applying to both Consultative Panels

This provides for:

- Requirement that the Regulatory Authority consult each Panel before imposing general regulations or directives
- Requirement that the Authority, if it does not agree with the comments of a Panel, to state publicly why they do not do so
- Requirement that the Authority publish reports and comments of Panels
- Requirement that the Minister consult each Panel before approving the Authority's annual budget
- Duty of each Panel to produce an annual report
- Duty on the Chairperson of each Panel to appear on request before an Oireachtas Committee

¹¹. Note that the quantum of resources to be provided to either Panel is at the discretion of the Authority.

- Right of Panels, either separately or jointly, to appoint Advisory Groups who may be consulted directly by the Authority

Schedule 8 (Provisions applying to both Consultative Panels)

This sets out more detailed provisions relating to the Panels, including the right of members to receive such allowances and expenses as the Authority determines and provisions for terminating a member's appointment.

PART 3 AMENDMENT OF CENTRAL BANK ACT 1997

SUPERVISION OF REGULATED BUSINESSES (Section 17, inserting new Part V into Central Bank Act, 1997)

Overview

The provisions are contained in Section 17 of the Bill, which inserts a new Part V into the Central Bank Act, 1997, in replacement for the existing Part V dealing with Bureaux de Change.

The new Part V extends the system of authorisation that at present applies to *bureaux de change* to persons engaged in money transmission business. The main purpose of the authorisation system is to facilitate the effective implementation of the anti-money laundering and anti-terrorist funding provisions of the Criminal Justice Acts. The present authorisation regime that applies to *bureaux de change* is also amended to encompass the objective of preventing the financing of terrorism.¹²

Part VB contains enforcement provisions.

Details: Part V (Supervision of Regulated Businesses)

The Part is structured into 16 Sections. These include provision for:

- Relevant Definitions
- Requirements to be met by an applicant for authorisation
- Power of the Regulatory Authority to refuse, suspend or revoke an authorisation, subject to specified procedural steps and a right of appeal to the Appeals Tribunal
- Requirement that the Authority maintain a register of authorised persons
- Offences
- Power of Authority to make regulations

Details: Part VB (Enforcement of Parts V and VA)

The Part is structured into 4 Sections. It applies both to Part V (supervision of money transmission services/bureaux de change) and Part VA (supervision of home lending institutions)

Section 36AM: Appointment of Inspectors

This gives the Bank the power to appoint employees or others as inspectors for the purpose of securing compliance with Parts V and VA.

Section 36AN: Powers of Inspectors with respect to Holders of Authorisations

This gives inspectors to power to enter premises, inspect premises, demand production of documents etc

¹² The measures are based on recommendations by the OECD's FATF

Section 36AO: Offence to obstruct Inspectors in the exercise of their Powers

This provides for a fine or/and imprisonment if a person obstructs an Inspector.

Section 36AP: Court may make Enforcement Orders

This gives the Bank the power to apply for an enforcement order requiring (or restraining) a person to act in accordance with the provisions of Parts V and VA.

SUPERVISION OF HOME LENDING INSTITUTIONS
(Section 17, inserting new Part VA into Central Bank Act, 1997)

Overview

The provisions are contained in Section 17 of the Bill, which inserts a new Part VA into the Central Bank Act, 1997.

Part VA provides for increased protection for persons who borrow on the security of their principal home. It provides for the following obligations on institutions who lend on the security of a borrower's principal home:

- They must be satisfied that the borrower has the capacity to fulfil her/his payment obligations under the loan contract
- The loan contract must not include clauses that are likely to cause, or contribute to causing, default on the terms of the contract
- They must comply with any additional provisions that the Regulatory Authority may prescribe in a Code
- They may not enforce a loan contract that does not comply with the provisions of this Part or with a Code issued by the Authority
- If not already subject to supervision by the Regulatory Authority as deposit-taking institutions, they are made subject to a formal authorisation regime

In addition, through a separate amendment to the Consumer Credit Act 1995, **all** institutions who lend on the security of a borrower's principal home are made subject to Part IX of that Act. This provides protection to a borrower by imposing various other obligations on housing loan lenders (disclosure of charges, non-linkage of services, warning re loss of home, mortgage protection insurance etc).

Part VB (described above) contains enforcement provisions.

The new provisions have their origin in the McDowell Report recommendation that *the Government should develop legislative proposals for ..the regulation by (the Regulatory Authority) of individuals and businesses which extend mortgage-backed loans from within their own resources*

Details: Part VA

The Part is structured into 7 Chapters.

CHAPTER 1: Preliminary Provisions

This contains the definitions relevant to this Part. 'Home lending business' to which the Part applies is defined as *a business that involves providing financial accommodation to a person on the security of the principal home of the person or of the person's dependants, whether or not the business is carried on in conjunction with any other business*. 'Financial accommodation' is broadly defined, with the intent to cover all forms of such accommodation – including 2nd mortgages, equity release products etc

CHAPTER 2: Prohibited Conduct

This provides that it shall be an offence for a person to engage in home lending business unless authorised by the Regulatory Authority or exempt from authorisation. Bodies exempt from authorisation are deposit-taking institutions - which are already subject to supervision by the Authority or its counterparts in other EEA States – and local authorities. Home loan contracts entered into by a body that is not authorised or exempted are not enforceable.

CHAPTER 3: Authorisations to carry on Home Lending Business

This sets out the provisions that must be complied with by a (non-exempt) body wishing to engage in home lending. They include that:

- the applicant is or will be able to carry out, in a proper manner, the responsibilities that a home lending institution is required to carry out by or under this Part
- the applicant has complied with, or will be able to comply with, such requirements (if any) relating to home lending institutions as are prescribed by the Authority under this Part
- the applicant has sufficient capital, expertise and resources to enable it to carry on a home lending business in a proper and competent manner
- the directors and other persons concerned in the management of the applicant have the probity and competency necessary to enable them to undertake the prudent management of such a business.

The Authority is given power to impose conditions on an authorisation and to suspend or revoke an authorisation for stated reasons. The Authority is required to follow prescribed procedures before taking such action. An applicant has a right to appeal against such a decision to the Appeals Tribunal (established by the CBFSAI Act, 2003).

The Authority is obliged to maintain a register of institutions authorised to engage in home lending business.

CHAPTER 4: Accounting and other Obligations of Holders of Authorisations

This requires the holder of an authorisation to keep proper accounts, to have them audited and to comply with any accounting standards prescribed by the Regulatory Authority.

CHAPTER 5: Regulation of Authorised Home Lending Institutions

This chapter applies to **all** home lending institutions. It provides that:

- They must be satisfied that a borrower has the capacity to fulfil her/his payment obligations under a housing loan contract
- The loan contract must not include clauses that are likely to cause, or contribute to causing, default on the terms of the contract
- They must maintain such records as the Regulatory Authority may prescribe

CHAPTER 6: Codes of Industry Standards

This gives the Regulatory Authority the power to issue a code of industry standards setting out the standards that authorised home lending institutions must comply with in carrying on a home lending business. The Authority is obliged to consult publicly before issuing such a code. The Authority may require a home lending institution to provide it with information to verify its compliance with code.

CHAPTER 7: Supplementary Provisions

This provides for penalties for home lending institutions that fail to comply with the provisions of this Part or with the conditions of their authorisation. It also provides that an authorised home lending institution that has entered into a contract for the provision of financial accommodation on the security of a person's principal home is not entitled to enforce the contract if—

- (a) the contract contravenes a provision of this Part or does not comply with an applicable code of industry standards, or
- (b) in relation to the operation of the contract, the institution engages in conduct that is inconsistent with such a provision or code.

The Bank is given power to make regulations on matters related to this Part.

FUNCTIONS OF BANK WITH RESPECT TO REGULATED FINANCIAL SERVICE PROVIDERS

(Section 13 inserting new Part IV into the Central Bank Act, 1997)

Overview

The provisions are contained in Section 13 of the Bill, which inserts a new Part IV into the Central Bank Act, 1997.¹³ This Part implements the recommendations of the Review Group on Auditing (RGA) in relation to financial service providers. It is intended to apply to all such providers with a legal presence in the State [i.e. entities directly authorised or supervised by the Regulatory Authority as well as branches in the State of European Economic Area providers - but not entities based in another European Economic Area State and operating into Ireland on a ‘freedom to provide services’ basis.].

The principal RGA recommendations are being implemented in the *Companies (Auditing and Accounting) Bill, 2003*. As this Bill is still before the Oireachtas, this Part of the CBFSAI Bill has had to be drafted on a stand-alone basis. Some language from the Companies Bill (as it stands after passage through the Seanad) has been used.

Details

The Part is structured into 3 Chapters.

CHAPTER 1: Interpretation

This provides for the necessary definitions in this Part. The ‘audit work’ definition encompasses the ‘non-audit work’ and ‘audit-related work’ referred to in the Companies Bill. The ‘affiliate of an auditor’ definition is taken from the Companies Bill. A definition of ‘regulated financial service provider’ will be provided elsewhere in the CBFSAI Bill.

CHAPTER 2: Compliance and Related Statements

This Chapter has its basis in the recommendation of the Review Group on Auditing (page 232) that the Directors of a company should be required to report on an annual basis to the shareholders on the company’s compliance with its obligations under company law, taxation law and other relevant statutory or regulatory requirements. In addition, it recommended that external auditors be required to report as to whether, in their opinion, the director’s report on the company’s compliance with its obligations is reasonable. It recommended that such obligations should apply to financial institutions with the reports on compliance being made by Directors and external auditors to the Central Bank rather than the Director of Corporate Enforcement. This Head gives the Regulatory Authority the power to:

¹³ All of the provisions of the original Part IV have been repealed except Section 27. Separately, section 27 is being repealed and its contents transferred to section 20 of the 42 Act.

- independently commission compliance reports from financial services providers (Section 25)
- issue binding guidance on how they should be prepared (Section 27A)
- require that the report be reviewed by an entity's auditor (Section 26)
- act on the basis of a request from another statutory authority, with the compliance report (and the auditors report if appropriate) to be sent directly to that Authority and to the Regulatory Authority (Section 25(2) and 26)
- issue guidelines on corporate governance to financial services providers (Section 27A (2))
- impose penalties for failure to comply with the provisions of this Chapter (Section 27)¹⁴

CHAPTER 3: Obligations of auditors of regulated financial services providers

This Chapter implements the enhanced reporting requirements by Auditors and associated Accountants recommended by the Review Group on Auditing. It recommended that:

1. the external auditors of a financial institution should provide an annual positive statement to the Central Bank on whether anything has come to their attention that gives rise to a legislative duty to report to the Central Bank (Recommendation 15.2)
2. there should be increased liaison between the Central Bank and the external auditors of financial institutions (already implemented by the Bank)
3. the Central Bank should have the power to obtain reports from external auditors or other reporting accountants on a variety of issues including accounting records, internal control systems or anything appropriate to its regulatory function (Rec. 15.4)
4. audit papers should be available on request to the Central Bank (Rec. 15.5)
5. the Central Bank should automatically receive management letters from external auditors of financial institutions at the same time as the 'final' management letter is being issued to the regulated entity. The auditor should inform the Central Bank if no report is being issued. (Rec. 15.6)

The recommendations are implemented in this Chapter as follows:

- Section 27B implements item 1
- Section 27C implements item 5. It is also intended to oblige the auditor to copy to the Bank the report that the auditor must make to the Directors of a company under the terms of the new Companies Bill in circumstances where the auditor is not satisfied with their Compliance Statement [par. 2(b) of

¹⁴ The prescribed penalties are those that could be imposed by a Court. The separate provisions in the Bill in relation to Sanctions give IFSRA the option of using new powers to impose sanctions (other than imprisonment) directly, subject to a right of appeal to the Appeals Tribunal.

section 205F of the Companies Act, 1990, as inserted by section 43 of the new Bill]

- Section 27D will oblige the auditor to inform the Bank whenever s/he is obliged to report a company to the Director of Corporate Enforcement under the Companies Acts (including the reporting requirement in section 43 the new Companies Bill where directors fail to prepare a Compliance Statement)
- Section 27E implements item 3
- Section 27F implements item 4
- Section 27G provides for penalties for non-compliance
- Section 27H provides for limited immunity for an auditor or affiliate who is acting under the terms of this Part

Related Items

The RGA recommended (Recommendation 9.12) that a liaison group be established to ensure a good flow of communication between IAASA and other regulators. The establishment of such a liaison group is a matter for IAASA; it is not explicitly provided for in the new Companies Bill. A separate provision of the CBFSAI Bill will include IAASA among the bodies with whom the Regulatory Authority must consult under the terms of section 61E of the Central Bank Act 1942 (inserted by section 30 of the CBFSAI Act, 2003). Section 33AK (5)(x) of the Central Bank Act 1942 (inserted by Section 26 of the CBFSAI Act, 2003) provides a specific “gateway” for the provision of confidential information by IFSRA to IAASA.

PART 4
AMENDMENT OF OTHER LEGISLATION

Overview

This Part consists of three schedules as follows:

- Schedule 1: Amendment of other Acts
- Schedule 2: Amendment of European Communities Regulations
- Schedule 3: Savings and Transitional provisions

Details

Schedule 1 deals with amendments being made to other Acts. The majority of these amendments are technical in nature arising in various circumstances. The following are examples of such amendments:

- Incorrect or incomplete references in existing legislation (e.g. the reference in paragraph five of the First Schedule of the Stock Exchange Act 1995 should be to Section 29(5) not 29(2)).
- Restoring provisions deleted in error
- Correcting Minister with responsibility for legislative provisions (e.g. the Insurance (Miscellaneous Provisions) Act 1985 is being amended to reflect the Minister for Finance acquiring the shares of Sealuchais Arachais Teoranta [the holding company established to acquire the former ICI] from the Minister for Enterprise, Trade and Employment).
- Clarifying definitions considered to be ambiguous (e.g. Section 18 of the Central Bank Act 1971, as amended, clarifies the powers of access of the Central Bank and the European Central Bank to information from license holders and others).
- Correcting typos/omissions (e.g. subsection (4) of Section 50 of the Central Bank Act 1989 should refer to Sections 233 and 268 of the Companies Act but omits “268”).

However there are a number of amendments of a more substantive nature as follows:

1. The McDowell report recommended that regulation should extend to moneylending excluded from the Consumer Credit Act due to the Act's narrow definition of 'consumer'. The Consumer Credit Act 1995 is being amended by way of an enabling provision to allow the Minister to extend some or all of the provisions of that Act to lending to non-personal consumers.
2. The Director of Consumer Affairs has indicated that the practice of using mortgage 'introducers' i.e. people who, although not authorised as mortgage intermediaries in their own right, introduce clients to authorised intermediaries in return for a commission, is on the increase and that the lack of regulation gives scope for abuse. The Consumer Credit Act 1995 is being amended by

way of a replacement definition for ‘mortgage intermediary’ to bring ‘introducers’ within the scope of the Act.

3. The Minister for Finance has a role, defined in Section 77 of the Central Bank Act 1989, in relation to the approval of mergers and acquisitions in the banking sector above a certain threshold. This Section is being expanded to elaborate on the criteria that the Minister would use to inform any decision made under this provision.
4. The right of an Administrator - appointed to an insurance company in difficulty under the terms of the Insurance Acts - to have access to the Insurance Compensation Fund is being restored

Schedule 2 deals with amendments being made to two European Communities Regulations. A small number of amendments are being made which are purely technical in nature.

Schedule 3 will deal with any savings and transitional arrangements arising from the completion of the amendments in the other two schedules.

Department of Finance
18 September 2003