



AN BILLE UM STOCMHALARTÁIN, 1994
STOCK EXCHANGE BILL, 1994

EXPLANATORY MEMORANDUM

This Bill will enable the Central Bank (the Bank) to act as the supervisor of the Irish Stock Exchange and of any stock exchange that may be established in the jurisdiction in the future. The Bank will also authorise and supervise the Irish member firms of an approved exchange. The Bill will meet obligations in respect of stock exchange member firms arising under EU Directives regulating investment firms.

Part I of the Bill contains commencement provisions, definitions and repeals. *Part II* deals with the approval of stock exchanges (excluding futures and options exchanges, which fall to be supervised by the Bank under the Central Bank Act, 1989). The authorisation of member firms is covered in *Part III*. Detailed regulatory provisions governing exchanges and member firms are contained in *Part IV*. *Parts V* to *VII* concern the responsibilities of auditors, acquisition and disposal of significant shareholdings in approved stock exchanges and authorised member firms, enforcement, including the appointment of inspectors, and other miscellaneous provisions.

PART I

PRELIMINARY AND GENERAL

Section 1 gives the short title of the Act (the Stock Exchange Act, 1994).

Section 2 provides for commencement of the provisions of the Act.

Section 3 defines relevant terms.

Section 4 repeals the Stock Exchange (Dublin) Act, 1799 and the Stockbrokers (Ireland) Act, 1918.

Section 5 sets out how notices and other documents authorised or required under the Act are to be served.

Section 6 provides that the expenses incurred by the Minister for Finance (the Minister) and the Minister for Enterprise and Employment in the administration of the Act are to be met from moneys provided by the Oireachtas. The Bank's expenses are to be met from the Bank's general fund, except where otherwise provided for by statute.

Section 7 provides that regulations made under the Act shall be laid before the Houses of the Oireachtas.

PART II

STOCK EXCHANGES

Section 8 makes it an offence to establish or operate a stock exchange in the State unless it is an approved stock exchange.

Section 9 provides that the Bank may grant approval, subject to conditions or otherwise, to operate as an approved stock exchange. The Bank may also refuse to grant approval, in which case it must inform the Minister and the proposed exchange of its decision and the reasons for it.

Each application for approval must include a copy of the rules and memorandum and articles of association of the proposed exchange. These may not be altered without the prior written consent of the Bank. The Bank will not approve an exchange unless it has a minimum level of capital, and will specify from time to time the level of capital to be maintained by an approved stock exchange.

The Bank will not approve an exchange unless it is incorporated and unless the Bank is satisfied that the directors, managers and qualifying shareholders of the exchange are fit and proper persons. Any appointment as director or manager of an exchange will be subject to the prior written approval of the Bank. An exchange must have its head office and registered office in the State.

The rules of an exchange must provide that the exchange will send a report of any disciplinary proceedings to the Minister and the Minister for Enterprise and Employment where the Minister, with the consent of the Minister for Enterprise and Employment, so requests. The Minister may lay such a report before the Houses of the Oireachtas if both Ministers consider it proper to do so, having regard to the common good and the rights of any person referred to in the report. Such a report laid before the Houses of the Oireachtas will be privileged but this will not affect the duties, rights and privileges of any person concerned with the preparation or publication of the report by the stock exchange.

The board of an exchange must be broadly-based and must represent a balance between the interests of the member firms and users of the exchange, and the public interest, and must include sufficient independent members to promote the protection of investors and the maintenance of proper standards. The exchange must have and maintain procedures to investigate complaints against itself and its member firms. The Bank may require a stock exchange so to structure itself or an associated or related undertaking as to make it capable of being supervised to the Bank's satisfaction.

The Bank must inform an applicant for approval of its decision within six months of receipt of the application, or within six months of the entry into force of this section, whichever is the later; or, where the Bank has requested additional information, within six months of the receipt of additional information, or within twelve months of the receipt of the original application, whichever is the sooner. It will be an offence knowingly or recklessly to apply for approval on the basis of false or misleading information.

Section 10 allows the existing Irish Stock Exchange three months from the coming into operation of this section to incorporate and to apply to the Bank for approval under *section 9*. Pending the Bank's decision the Exchange will stand approved under the Act and the

Bank may impose conditions and requirements on the Exchange and issue directions to it. The Exchange will have the right to appeal any direction, condition or requirement to the High Court (the Court).

Section 11 provides that the Bank may make its approval of exchanges subject to conditions, either at the time of approval or afterwards, provided that the conditions do not contravene guidelines which may be issued by the Minister with the agreement of the Minister for Enterprise and Employment. The exchange concerned will have the right to appeal a requirement or condition to the Court.

Section 12 provides that the Bank may refuse to approve amendments to the rules or memorandum or articles of association of an approved stock exchange. The Bank must notify the stock exchange of its refusal and the reasons for it.

Section 13 provides that an approved exchange, or proposed exchange, may appeal to the Minister against a refusal by the Bank under *sections 9* or *12* within 21 days of receipt of notification of the refusal. The Minister must consult with the Minister for Enterprise and Employment, the appellants and the Bank regarding any such appeal. If both Ministers uphold the appeal, the Bank must grant approval. An appeal must be accompanied by a fee prescribed by the Minister.

Section 14 provides that the Bank may revoke approval of an exchange at the request of the exchange in question, or where an exchange has failed to operate within twelve months of the original approval, or has been inactive for a period of more than six months or is being wound up.

In addition, the Bank may apply to the Court for an order revoking approval of an exchange on any of a number of grounds, for example: to protect investors; where the exchange has been convicted on indictment of an offence under this Act or any Act under which the Bank exercises a statutory function, or of an offence which involves fraud, dishonesty or breach of trust; if the exchange no longer complies with capital or liquidity requirements or is unable or likely to become unable to pay its debts; if a director, manager, or qualifying shareholder no longer fulfils the required conditions of competence and probity and the concerns expressed by the Bank in respect of that person have not been addressed by the exchange; or if the exchange has so organised its business or corporate structure as to be incapable of being supervised to the Bank's satisfaction. Where it proposes to revoke approval or apply to the Court to revoke approval, the Bank will serve notice on the exchange and each of its member firms.

Where an exchange whose approval has been revoked is not being wound up it will, together with its member firms, continue to be subject to the duties and obligations imposed by this Act until the Bank is satisfied that its liabilities and duties have been discharged and the Bank must be informed of the arrangements being made to discharge liabilities.

Where such an exchange has failed to notify the Bank of its arrangements to discharge liabilities, or where the arrangements are unsatisfactory, the Bank may direct the exchange, or any of its member firms, to refrain from creating any liabilities or from dealing with or disposing of the assets of the exchange or its member firms, or from engaging in transactions, or from making payments, without the prior authorisation of the Bank. The Bank may apply to the Court if the direction is not complied with and the Court may confirm, set

aside or vary it. The Bank may direct such an exchange to submit for approval a scheme for the orderly discharge of the liabilities and duties concerned.

In cases where approval of an exchange is revoked and the exchange is being wound up, the section contains provision to impose on the liquidator duties similar to those set out in the two preceding paragraphs.

The Bank will publish notice of any revocation of approval within 28 days. An exchange whose approval has been revoked must cease to operate as an exchange and it will be an offence to provide an investment service on such an exchange.

Section 15 obliges an approved exchange to maintain such books and records for such length of time as the Bank specifies and failure to comply with this obligation will be an offence.

PART III

MEMBERSHIP OF STOCK EXCHANGES

Section 16 designates the Bank as the competent authority for member firms of approved stock exchanges under the Investment Services Directive and the Capital Adequacy Directive.

Section 17 makes it an offence to claim to be a member firm of an approved stock exchange without in fact being such a member firm. The section also makes it an offence to be a member firm of an approved stock exchange without authorisation by the Bank under *section 18* of the Act or by a competent authority under the Investment Services Directive in another EU member state, or without appropriate authorisation as a European Communities credit institution in another member state.

Section 18 allows the Bank to grant, subject to conditions or otherwise, or to refuse to grant, authorisation to a person to act as an authorised member firm. The authorisation shall specify which investment services the authorised member firm may offer. When the Bank refuses authorisation it must notify the proposed member firm, which may appeal to the Court within 21 days of receipt of the notification.

An applicant for authorisation as a member firm which is incorporated must have memorandum and articles of association the provisions of which enable it to operate in accordance with the Act or, in the case of an unincorporated body, must have a partnership agreement which so enables it, and must have a minimum level of capital (which the Bank shall specify from time to time). The Bank must be satisfied with the structuring and financing of the proposed member firm and that the directors, partners, qualifying shareholders and managers of the firm are fit and proper persons. A member firm must have its head office and registered office in the State and any appointment as director, partner or manager of an applicant firm will be subject to the prior written approval of the Bank.

An applicant will be informed within six months of the date of receipt of the application, or within six months of the entry into force of this section, whether authorisation has been granted; or, where additional information is requested by the Bank, within six months of its receipt, or within twelve months of the receipt of the original application, whichever is the sooner. For the purpose of evaluating an application, the Bank may request further information or instruct an authorised officer to make any necessary inquiries. The Bank will

apply the Act with regard to the division of responsibilities between home and host EU member states under the Investment Services Directive and the Capital Adequacy Directive.

The Bank may require a proposed or authorised member firm so to structure itself or an associated undertaking as to make it capable of being supervised to the Bank's satisfaction. The Bank may direct an authorised member firm to alter its memorandum and articles of association or a partnership agreement and any proposed change to the memorandum and articles of association or a partnership agreement of an authorised member firm will require the approval of the Bank. It will be an offence knowingly or recklessly to apply for authorisation on the basis of false or misleading information.

Section 19 requires the Bank to comply with requests from the European Commission to limit or suspend decisions where the applicant for authorisation is the subsidiary of a parent company governed by the laws of a non-EU member state, or where a transaction takes place whereby an authorised member firm would become such a subsidiary.

Section 20 requires an authorised member firm wishing to establish a branch in another EU member state to inform the Bank of the address of the proposed branch, the names of its managers and the proposed programme of operations. The Bank will communicate this information to the relevant authorities of the other EU member state within three months (so permitting establishment of the branch). If the Bank does not communicate the information within three months (so preventing establishment of the branch), it must inform the member firm of the reasons and the member firm may appeal to the Court against the Bank's decision.

Section 21 allows existing member firms of the Irish Stock Exchange three months from the coming into operation of this section to apply to the Bank for authorisation under *section 18*. Pending the decision of the Bank the firms shall stand authorised under the Act and the Bank may impose conditions and requirements on them and issue directions to them. The existing member firms will have the right to appeal conditions or requirements to the Court.

Section 22 provides that the Bank may make its authorisation of a member firm subject to conditions, either at the time of approval or afterward, provided that the conditions do not contravene guidelines issued by the Minister with the agreement of the Minister for Enterprise and Employment. A member firm will have the right to appeal to the Court against the imposition of any condition.

Section 23 provides that the Bank may refuse to consent to amendment of the partnership agreement or the memorandum or articles of association of a member firm in the interests of the regulation of approved exchanges or their authorised member firms or to protect investors. The Bank must notify its refusal and the reasons for it to the applicant, who may appeal to the Court within 21 days.

Section 24 allows the Bank to revoke the authorisation of a member firm if the member firm has so requested, or if the firm has failed to operate within 12 months of authorisation, or if it has been inactive for a period of more than 6 months, or if it is being wound up. In addition, the Bank may apply to the Court for an order revoking the authorisation of a firm if it is in the interests of the orderly regulation of approved stock exchanges or their member firms or to protect investors, or where the firm has been convicted on indictment of an

offence under this Act or any Act under which the Bank exercises a statutory function, or of an offence which involves fraud, dishonesty or breach of trust.

The Bank may also apply to the Court for an order revoking authorisation if circumstances have changed since the authorisation such that the Bank would now take a different decision in the matter, or if an authorisation was obtained through false or misleading statements, or if the firm no longer complies with the conditions under which the authorisation was granted, or which were subsequently imposed, or if a firm fails to comply with a material requirement of the Act.

The Bank may also apply to the Court for an order revoking authorisation if the firm no longer complies with the capital or liquidity requirements laid down by the Bank from time to time, or is unable or likely to become unable to pay its debts or suspends payments lawfully due, or if a director, manager or qualifying shareholder no longer fulfils the fitness and probity conditions set out by the Bank and the concerns expressed by the Bank in respect of that person have not been addressed, or if it has breached a code or rules of conduct under *section 38*, or has structured itself in such a way as to render itself or its associates incapable of being supervised to the Bank's satisfaction, or if it has failed to comply with a condition or requirement imposed under the Act and the Bank is of the opinion that its stability and soundness are materially affected by that failure.

The Bank must notify an authorised member firm of its intention to revoke, or to apply to the Court to revoke, its authorisation and must state the reasons for its intention.

Member firms whose authorisation has been revoked will continue to be responsible for arranging the discharge of all contracts entered into before the announcement of revocation unless the Bank states otherwise. Where the firm whose authorisation has been revoked is not being wound up, the Bank must be informed of the arrangements being made to discharge liabilities and the firm will continue to be subject to the duties and obligations imposed by the Act and by the rules of the approved stock exchange until the Bank is satisfied that its liabilities and duties have been discharged.

Where such a firm has failed to notify the Bank of the arrangements being made to discharge liabilities, or where the arrangements are unsatisfactory, the Bank may direct the firm to refrain from creating liabilities, dealing with or disposing of assets, engaging in transactions or making payments without the prior authorisation of the Bank. The Bank may apply to the Court if the direction is not complied with and the Court may confirm, set aside or vary the direction.

In cases where authorisation is revoked and the firm is being wound up, the section contains provision to impose on the liquidator duties similar to those set out in the two preceding paragraphs.

The Bank must publish notice of the revocation of an authorisation within 28 days. A firm whose authorisation has been revoked must cease to operate as an authorised member firm and it will be an offence for a former authorised member firm to operate as an authorised member firm.

Section 25 provides that the Bank shall require that a register of member firms of an approved stock exchange be maintained by the exchange at specified premises and be available for inspection by the public. A copy of the register must be published annually.

Section 26 enables the Bank to require a member firm to maintain a proportion of its assets in liquid form and to maintain an asset:liability ratio as specified by the Bank. The Bank may require that the assets or liabilities or part thereof of associated undertakings should be taken into account in assessing the assets and liabilities of a member firm. Requirements may include any requirement necessitated under the Capital Adequacy Directive.

Section 27 obliges a member firm to maintain such books and records for such length of time as the Bank specifies and failure to comply with this obligation will be an offence.

PART IV

REGULATION AND SUPERVISION OF STOCK EXCHANGES AND MEMBER FIRMS

Section 28 provides that the Bank will administer the system of regulation and supervision of exchanges and their member firms in the interests of investor protection and of the orderly and proper regulation of approved stock exchanges and their member firms and that of financial markets and subject to guidelines which may be issued by the Minister with the agreement of the Minister for Enterprise and Employment. Any such guidelines will be published in the *Iris Oifigiúil*.

The Bank may commission an independent assessment of the capacity of an exchange or member firm to engage in a particular activity.

The Minister may, in consultation with the Bank, and having considered representations made by supervised exchanges or member firms, prescribe fees for supervision by the Bank.

The Bank will co-operate with the competent authorities in other EU Member States so that the responsibilities of each competent authority may be effectively discharged.

Section 29 equips the Bank with a general authority to issue directions to stock exchanges and member firms and their directors and management in the interests of proper and orderly regulation of approved stock exchanges or their member firms or the protection of investors.

In addition, where the Bank believes that an approved exchange or member firm is or is likely to become unable to pay its debts, or is not maintaining adequate capital, or fails to comply with conditions or requirements imposed under the Act in such a way as to lead the Bank to conclude that the stability or soundness of the exchange or member firm is affected, or is conducting business in a manner that jeopardises client funds, then the Bank may direct, for a period not exceeding twelve months, that the exchange or member firm suspend trading and the making of payments, and refrain from disposing of and acquiring assets or liabilities and from soliciting or carrying on business except as authorised by the Bank. The *First Schedule* to the Act contains supplementary provisions in relation to a direction by the Bank under this section and provides for appeals to the Court against such a direction. The Bank may apply to the Court for confirmation of a direction and where a direction issued by the Bank under this section is not being complied with, the Bank shall apply to

the Court for such confirmation. While a direction under this section is in force no winding-up proceedings may be taken and no receiver may be appointed or assets seized without the prior permission of the Court.

Section 30 enables the Bank to apply to the Court for an order winding up an exchange or a member firm (or a decree of dissolution in the case of a partnership). It may do so if it believes the entity is or is likely to become unable to meet its obligations to its clients or creditors, or if its approval or authorisation under the Act has been revoked and it has ceased to operate in the capacity in which it was approved or authorised, or if it is in the interest of the proper and orderly regulation of exchanges and their member firms or necessary for the protection of investors or if the entity has failed to comply with a direction given by the Bank.

Where an approved, or former approved, exchange or an authorised, or former authorised, member firm, is being wound up voluntarily, and the Bank has reason to believe that any of the grounds detailed in the previous paragraph exist which would allow the Bank to apply to the Court for a winding-up, the Bank may apply to have such exchange or member firm wound up by the Court.

Where the winding-up of such an exchange or member firm is sought by a person other than the Bank, the Bank must be notified and will be entitled to be heard on the matter.

Where such exchange or member firm is being wound up, any document which is required to be sent to a creditor must also be sent to the Bank. The Bank may send a representative to any meeting of creditors and appoint a representative to a committee of inspection.

Section 31 makes it an offence to advertise or cause to be advertised the services of a stock exchange unless the exchange is approved under the Act or is established abroad and approved under its home state's procedures. The section also makes it an offence for a person to advertise investment services or cause them to be advertised while claiming to be a member firm of an approved stock exchange but not in fact being such a member firm.

In the interests of the orderly and proper regulation of approved stock exchanges or their member firms or the protection of investors, the Bank may impose conditions about advertising in approving stock exchanges or authorising member firms and may set out rules about advertising by approved stock exchanges and authorised member firms.

The Bank may require an approved stock exchange or its member firms to publish specified information or display specified information at their premises and the Minister may prescribe information to be displayed by such stock exchange or member firms at their premises.

If the Bank considers it expedient in the interests of the proper regulation of member firms or the protection of investors, it may give a member firm a direction about the matter and form of any advertisement or to withdraw an advertisement or cease advertising. Such a direction may for example prohibit the member firm from issuing advertisements of any specified description or require it to modify advertisements or to include specified information in any advertisement.

The Bank may direct the publication of a correction of an advertisement issued in contravention of this section or of the fact that an

offence under this section has taken place or that there has been a breach of a condition or requirement under this section. The Bank may itself publish advertisements correcting misleading aspects of advertisements published by approved stock exchanges or member firms.

An agreement entered into after the issue of an advertisement which is in contravention of this section will not be enforceable and the customer may recover any money or instrument or property transferred by him under the agreement, together with such compensation for his losses as the parties may agree or the Court determine. If a customer elects not to enforce an agreement null under this section he shall return any money or property received by him under the agreement. The Court may however allow the enforcement of an agreement if it is satisfied that the customer was not influenced by the advertisement or that the advertisement was not misleading.

If an advertisement is published without the name and address of the person who arranged for its publication, the Bank may compel the publisher to supply those details.

It will be an offence to fail to comply with a prescription, direction or request under this section.

Section 32 allows the Bank to exempt certain classes of advertisement from the provisions of *section 31*.

PART V

AUDITORS

Section 33 allows the Bank to require an approved stock exchange or authorised member firm to notify it in advance of the proposed appointment of a person as auditor and to prevent the appointment of a named person as auditor. Where the Bank directs that a person not be reappointed as auditor, that person may appeal to the Court.

Section 34 provides that an unincorporated member firm must appoint an auditor who shall act in a manner analogous to an auditor under the Companies Acts. The Bank may set out requirements for the accounts of such a member firm and may impose obligations on the firm or its auditor.

The section obliges the auditor of an approved stock exchange or authorised member firm to report in writing to the Bank if he or she has reason to believe that there are circumstances which affect the exchange's or member firm's ability to meet its financial obligations, or defects in the accounting systems or records, material inaccuracies in returns, or defects in the safeguards for client money or instruments. The auditor must also report to the Bank if he intends to qualify any report required under the Companies Act or this Act; or if he or she has reason to believe that the exchange or member firm has breached the rules of the approved stock exchange to a material degree; or if he or she intends to resign or not to seek re-election as auditor. If requested to do so by the Bank, the auditor must report to the Bank whether the exchange or member firm has complied with any condition or requirement imposed under this Act. The auditor must send a copy of such a report to the exchange or member firm concerned.

The auditor must inform the Bank of any matter coming to notice which he has reason to believe is relevant to determining whether a person is competent and suitable to perform the functions of his or her position in an exchange or member firm or whether disciplinary action should be taken in consequence of a contravention of the Act. In addition, the Bank may require the auditor to supply it with information it believes necessary to the performance of its duties under the Act and may require such information to be supplied independently of the exchange or member firm.

An auditor will not have breached his or her duty to the exchange or member firm by acting in compliance with this section, and he or she will not be liable as a result of such compliance.

In preparing a report under this section, the auditor must investigate whether proper accounting records have been kept, whether satisfactory systems of control have been maintained and whether rules relating to the treatment of client money and instruments have been complied with. The auditor will have a right of access to all books and records necessary to fulfil his or her functions, and will be entitled to require any necessary information or explanations.

This duty to provide access to books and records and to supply information and explanations extends to associated and related undertakings of the exchange or member firm which are incorporated in the State. Such an undertaking may apply to the Court for an order prohibiting an auditor from requesting information on the grounds that the request is unreasonable and unnecessary.

Any report requested by the Bank under this section will be prepared at the expense of the relevant stock exchange or member firm.

Section 35 makes it an offence for an officer or employee of an approved stock exchange or authorised member firm or of an associated or related undertaking knowingly or recklessly to supply false, misleading or deceptive information, or to fail to supply within a specified period information that is within his or her knowledge (or that may be procured by him or her) to an auditor who requires it under this Act.

PART VI

MISCELLANEOUS

Section 36 provides for a second audit if on the basis of the first audit the Bank has a substantial concern about the audited accounts of an approved stock exchange or member firm. It allows the Bank to direct that the exchange or member firm submit audited accounts for further examination by a person appointed by the Governor of the Bank.

The appointed person will have all the powers available to an auditor under the Companies Acts and under this Act. The auditor of the exchange or member firm must afford the appointed person full co-operation in his or her examination. It will be an offence for an officer or employee of the exchange or member firm or of an associated or related undertaking knowingly or recklessly to supply false, misleading or deceptive information to the person appointed. If there is any refusal to provide information to the appointed person, he or she may certify the refusal to the Court and the Court may make an order as to the information to be supplied.

Section 37 provides that the Bank may apply to the Court to issue a direction to an exchange or member firm to dismiss an officer or employee if the Bank becomes aware that the person's probity is such as to render him or her unsuitable. In a case where an officer or employee is not competent, the Bank may apply to the Court for a direction to dismiss or suspend the officer or to dismiss the employee or move him or her to another area of work. Such a person may not then be employed in any capacity by an exchange or member firm (or by any other entity supervised by the Bank) without the written permission of the Bank, which may specify conditions relating to his or her employment and may amend those conditions from time to time. The subject of a direction who is refused such written permission may appeal the Bank's decision to the Court.

The direction must be served on the person to whom it relates, who will be guilty of an offence if, in contravention of the direction, he or she continues in or accepts employment in an entity supervised by the Bank. An approved exchange and its member firms and any entity supervised or regulated by the Bank must take reasonable care not to employ a person in contravention of a disqualification direction. The Bank or the subject of the direction may apply to the Court to have the disqualification direction revoked at any time.

Section 38 provides that the Bank shall draw up a code of conduct for an approved stock exchange or member firms or both where such an exchange does not adopt and maintain rules of conduct. Such a code or rules of conduct will include provisions which seek to ensure that firms act honestly, fairly, skilfully and carefully in the best interests of the client and the integrity of the market. The code or rules of conduct will also seek to ensure that firms are adequately resourced and organised, that they seek from their clients information about their financial situation and make adequate disclosure of relevant information to them, that they seek to avoid conflicts of interests and ensure that clients are treated fairly when such conflicts are unavoidable and that they comply with all regulatory obligations. A code or rules of conduct may take account of the status or experience of a client. The Bank may impose conditions on a member firm in respect of compliance with a code of conduct.

Section 39 defines acquiring transactions and disposals for the purposes of this Part.

Section 40 provides that a person who proposes to make an acquiring transaction or disposal shall notify the Bank as soon as may be of the proposal and the size of the holding involved. An authorised member firm or approved stock exchange shall notify the Bank as soon as it becomes aware that an acquiring transaction or disposal is proposed that causes holdings to exceed or fall below certain levels. The Bank may approve or refuse to approve of an acquiring transaction.

Section 41 prohibits the acquiring transaction until the Bank has approved of it or until three months have elapsed since the Bank was first notified of it or received requested additional information about it.

Section 42 provides that, where the Bank approves an acquiring transaction, it may specify in writing a period for the implementation of the transaction.

Section 43 allows approval to be given to an acquiring transaction subject to conditions which the Bank may vary or revoke at any time.

Section 44 provides that, subject to *section 42*, an acquiring transaction will only be valid if entered into within 12 months of the Bank giving its approval or within 12 months of the end of the three month period prescribed in *section 41*.

Section 45 provides that the Bank may refuse to approve an acquiring transaction. Where the Bank refuses approval or where it has not been notified of a proposed acquiring transaction under *section 40*, the Bank may issue a direction under *section 29*.

Section 46 provides for an appeal to the Court where the Bank refuses to approve an acquiring transaction or attaches conditions to its approval.

Section 47 permits the Bank to carry out inquiries into a proposed acquiring transaction and makes it an offence wilfully or knowingly to obstruct or prevent the inquiries or knowingly or recklessly to provide false or misleading information.

Section 48 provides that approved stock exchanges and authorised member firms must inform the Bank at least once a year of details of its shareholders.

Section 49 provides that an order under sections 201 or 203 of the Companies Act, 1963 may not be made until the Bank has given approval to an acquiring transaction or until the time limit specified in *section 41* has expired.

Section 50 amends section 16 of the Central Bank Act, 1989 to allow the Bank to communicate information to an approved stock exchange, to a futures and options exchange regulated under the Central Bank Act, 1989, to a regulatory authority in another jurisdiction and to a committee appointed under *section 65* of this Act.

Section 51 provides that a member firm shall inform clients and investors of whether a compensation scheme exists and the nature and level of any protection available from it, before engaging in business with them.

Section 52 enables the Bank to impose requirements or approve rules relating to the safekeeping of client money and investment instruments. It will be an offence to fail to hold client money and investment instruments on trust, to fail to keep client money in special accounts and to fail to keep audited records of such accounts. It will also be an offence for a director, officer or employee of a member firm to misappropriate fraudulently client money or investment instruments held by the member firm.

Section 53 provides for exemption from liability in damages for the Bank, for any member of a Committee appointed under *section 65* and for an approved stock exchange in carrying out functions under the Act, unless it is shown that the act or omission was in bad faith, and for a disclaimer of warranty in respect of approved exchanges and member firms arising from the carrying out of its functions under this Act by the Bank. Neither the State nor the Bank will be liable in respect of any loss arising out of the insolvency or default or performance of any approved stock exchange or member firm.

Section 54 provides that in cases where an approved stock exchange or authorised member firm is being wound up and is unable to pay its debts and *sections 15, 27 or 52 (3)* of the Act have been contravened and the Court believes that the contravention has contributed to the deficiency in funds the Court may, on application by the liquidator or

receiver or the Bank or any creditor, client or investor, declare an officer of the exchange or firm personally liable for all or part of the debt. A director of an approved stock exchange or authorised member firm who fails to take all reasonable steps to secure compliance by the exchange or member firm with sections 15, 27 or 52 (3) of the Act shall be guilty of an offence.

PART VII

ENFORCEMENT, OFFENCES AND PENALTIES

Section 55 provides for the appointment by the Bank of an authorised officer.

Section 56 allows an authorised officer to enter premises at which he or she has reason to believe documents relating to an exchange or member firm are kept and to inspect and take copies of or extracts from these documents for the purpose of obtaining information required under the Act for the exercise of the Bank's statutory functions. He or she may make inquiries in relation to the books kept pursuant to the Act or the Companies Act, or any other document relating to the business of the exchange or member firm. He or she may require any person employed on the premises to produce any documents (relevant to the exchange or member firm) in the person's control, and to prepare a report on specified aspects of the business of the body concerned or to explain entries in the documents.

An approved stock exchange or member firm must supply the Bank with the information the Bank considers necessary for its functions under the Act.

The duties placed on persons in this section to produce or provide information and documents extend to liquidators and former officers, employees or agents (including bankers, accountants, solicitors, auditors and financial advisors) of exchanges or member firms, and to any other person, including a person resident outside the State, who appears to the Bank to have possession or control of relevant material. If any person fails to provide information to the authorised officer, that officer may certify the failure to the Court and the Court may make an order as to the information to be provided.

Section 57 allows the Bank to apply to the Court for the appointment of an inspector to investigate the affairs of an approved stock exchange or authorised member firm or subsidiary, associated or related undertaking.

Section 58 provides that an inspector may, if necessary and with the approval of the Court, extend his inquiry into another approved stock exchange, authorised member firm or undertaking which was at any relevant time a subsidiary, related or associated undertaking of the stock exchange or member firm which is the subject of this primary investigation.

Section 59 provides that the Court may give directions to an inspector with a view to ensuring as efficient and effective an investigation as is practicable.

Section 60 provides that all officers, employees, agents (including bankers, accountants, solicitors, auditors and financial advisors) and shareholders of an investigated body, both current and former, and

any other person who the inspector considers has relevant information, must co-operate with the inspector, producing all documentation and records required of them and attending before him or her when required and otherwise rendering all reasonable assistance.

The inspector may administer an oath and may examine on oath and reduce the responses to writing and require the person being examined to sign them. If the inspector has reasonable grounds to believe that a person currently or formerly connected with the investigated entity maintains an account through which has passed money related to the business of the investigated entity, or which has been connected with misconduct on the part of that person, he may require him or her to produce all documentation related to that account.

If a person who is required to assist the inspector refuses to cooperate the inspector may certify the refusal to the Court which may then inquire into the matter. The Court may make an order including an order to cooperate with the inspector or an order exempting a person from that obligation.

Section 61 provides that expenses of any investigation under *section 57* will be met by the Bank, but the Court may direct that any person dealt with in the report of that investigation must repay the Bank any expenses or fees incurred by the Bank. A person who is convicted on indictment of a criminal offence, or who is ordered to pay damages, or who is awarded damages, as a result of an investigation, may be directed by the Court to repay the Bank, or any person made liable by the Court for any expenses incurred by the Bank, the costs of all or part of the investigation. In the case of a person awarded damages, the Court may not order payment of more than 10 per cent. of the damages awarded.

Section 62 provides that the inspector shall make interim reports to the Court at the Court's request, and on conclusion of his investigation shall make a final report to the Court, and that he may at any time inform the Court of information tending to show that an offence has been committed. The Court must furnish copies of any report presented to it to the Minister and the Minister for Enterprise and Employment and the Bank and, if it thinks fit, to the investigated body and its auditors and to the shareholders, clients and creditors of the investigated body or of any corporate body dealt with in the report who appear to the Court to be affected by the report. The Court may cause the report to be published. The Court may direct omissions to be made from the report in all copies save those required to be sent to the Bank and the Ministers.

The Minister may lay a copy of the report before each House of the Oireachtas if both Ministers think it proper to do so, having regard to the common good and the rights of any person referred to in the report and a report so laid shall be privileged.

Section 63 provides that, having considered a report under *section 62*, the Court may order the winding-up of a company or the dissolution of a partnership and may make an order remedying any disability suffered by any person as a result of the conduct of the exchange or member firm concerned. The Bank may also apply for a winding-up order.

Section 64 allows the Bank to appoint an inspector into the affairs of an approved stock exchange or member firm or an associated undertaking and he or she may investigate such matters as compliance with Bank requirements under this Act, stock exchange rules or codes

of conduct and any requirement of this or any other Act. The inspector may also investigate any non-legally-binding understanding relevant to the investigation. For the purposes of an investigation under this section, sections 58, 60 (except subsection (3)) and 62 shall apply, with necessary modifications, to the body under investigation and to any present or former officer and with the substitution of the Bank for the Court except for the purposes of extending the investigation to other bodies (section 58) and dealing with refusal to co-operate (section 60 (4)). If the Bank believes that a portion of the report under this section should not be disclosed the Bank may delete it from any disclosure of the report, except in copies which are required to be sent to the Minister and the Minister for Enterprise and Employment.

Section 65 provides for a Committee to be set up by the Bank to determine whether there has been a breach by an approved stock exchange or member firm of a condition or requirement imposed by the Bank under the Act and to issue a reprimand or require payment to the Bank of a specified sum not exceeding £500,000, provided that the exchange or member firm concerned agrees to the procedure. Otherwise the Bank may apply to the Court, which may issue a reprimand and/or direct the exchange or member firm to pay to the Bank a specified sum not exceeding £500,000 or may dismiss the application. An exchange or member firm against which a determination has been made by a Committee may appeal the determination to the Court. More detailed provisions relating to a Committee under this section are set out in the *Second Schedule*.

Section 66 provides that a judge of the District Court may issue a warrant authorising a member of the Garda Síochána and any others named in the warrant to enter a specified premises to search for and take possession of documents which an officer of the Bank believes are held on the premises. The warrant will have effect for one month from date of issue, and any documents seized may be retained for a period of three months, or until the conclusion of criminal proceedings. It will be an offence to obstruct the exercise of the warrant.

Section 67 provides that an inspector's report will be admissible in civil proceedings as evidence of proven fact, unless the contrary is shown, and as evidence of the inspector's opinion.

Section 68 provides for legal professional privilege. It also provides that the publication, in pursuance of this Part of the Act, of any report, book or document relating to inspectors appointed under this Part, will be privileged.

Section 69 provides that no document relating to a person which was obtained under section 66 of this Act may be disclosed without that person's consent to anyone but the Bank, or a person authorised by it under this section, or an inspector appointed under the Act, or the Minister, or the Minister for Enterprise and Employment, or a court of competent jurisdiction, or a competent authority for the purpose of certain Council Directives, or a Committee appointed under section 65 of the Act. However, if publication or disclosure is required in the course of certain criminal proceedings, or in compliance with any requirement imposed by the Act, or with a view to the Bank's instituting proceedings for the winding-up under this Act of the person to whom the document relates, disclosure or publication will be permitted. Disclosure or publication in contravention of this section will be an offence.

Section 70 provides for penalties for the offences created by the Act. On summary conviction, a person guilty of an offence will be liable to a fine not exceeding £1,000 or, if an individual, to imprisonment for not more than twelve months or both. On conviction on indictment, such a person will be liable to a fine not exceeding £1,000,000 or, if an individual, to imprisonment for not more than ten years, or both.

The *First Schedule* sets out provisions in relation to section 29.

The *Second Schedule* sets out provisions in relation to a Committee appointed under section 65. The Bank will appoint a Committee of three persons, from a panel of seven persons nominated by the Minister with the consent of the Minister for Enterprise and Employment, to determine whether there has been a breach of a condition or requirement imposed by the Bank. The Minister for Finance will pay the remuneration and expenses of the Committee members. A Committee will have the powers, rights and privileges of a Judge of the High Court. It will be an offence to refuse to appear before a Committee or to refuse to answer questions put by the Committee.

*An Roinn Airgeadais,
Meán Fómhair, 1994.*

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