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**AN BILLE UM URRÚIS FAOI CHUMHDACH  
SÓCMHAINNE, 2001  
ASSET COVERED SECURITIES BILL, 2001**

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*Mar a tionscnaíodh  
As initiated*

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Building Societies Act, 1989	1989, No. 17
Central Bank Act, 1971	1971, No. 24
Companies Act, 1963	1963, No. 33
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European Communities Act, 1972	1972, No. 27
Investor Compensation Act, 1998	1998, No. 37
National Treasury Management Agency Act, 1990	1990, No. 18
Netting of Financial Contracts Act, 1995,	1995, No. 25
Petty Sessions (Ireland) Act, 1851	12 & 13 Vic. c. 93.
Public Offices Act, 1879	42 & 43 Vic. c. 58.
Registration of Deeds Act, 1707	6 Anne. c. 2.
Registration of Title Act, 1964	1964, No. 16
Taxes Consolidation Act, 1997	1997, No. 37
Trustee Savings Banks Act, 1989	1989, No. 21



AN BILLE UM URRÚIS FAOI CHUMHDACH  
SÓCMHAINNE, 2001  
ASSET COVERED SECURITIES BILL, 2001

# BILL

*entitled*

AN ACT TO FACILITATE THE ESTABLISHMENT AND  
OPERATION OF A MARKET IN ASSET COVERED  
SECURITIES, TO PROVIDE FOR THE REGISTRATION  
OF DESIGNATED CREDIT INSTITUTIONS, TO AMEND  
THE BUILDING SOCIETIES ACT, 1989 AND CERTAIN  
OTHER ENACTMENTS, AND TO PROVIDE FOR  
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY MATTERS

**1.**—(1) This Act may cited as the *Asset Covered Securities Act, 2001*. Short title and commencement.

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

**2.**—The purposes of this Act are to facilitate— Purposes of Act.

(a) the establishment and operation in the State of designated credit institutions, and

(b) the establishment and operation of a market in asset covered securities so as to make available further sources of funds to those institutions.

**3.**—(1) In this Act, unless the context otherwise requires— Interpretation.

“this Act” includes a regulation made under this Act;

“agricultural land” means land that is used, or set aside for use, primarily for the purpose of growing crops or other agricultural products, or for grazing stock or raising domestic animals or birds, and includes all improvements made to the land for that purpose;

“asset” includes an interest in an asset;

“asset covered securities”—

(a) in relation to a designated or formerly designated mortgage credit institution, means mortgage covered securities issued by the institution, and 5

(b) in relation to a designated or formerly designated public credit institution, means public credit covered securities issued by the institution;

“Authority” means the Central Bank;

“building” includes a structure other than a building; 10

“building society” means a building society incorporated under the Building Societies Act, 1989, or deemed by section 124 (2) of that Act to be so incorporated;

“category A country” means a country (other than an EEA country) to which section 5(1)(a) relates; 15

“category B country” means a country to which section 5(1)(b) relates;

“Central Bank” means the Central Bank of Ireland;

“Codified Banking Directive” means Directive 2000/12/EC of the European Parliament and of Council of the European Union 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; 20

“commercial property” means land that is used, or is set aside to be used, primarily for the purpose of any industry, trade or other business undertaking, but does not include a mine, quarry, agricultural land or residential property; 25

“Companies Acts” means the Companies Act, 1963 to 1999, and every enactment that is to be construed as one with those Acts;

“conditions”, in relation to a designated credit institution, means the conditions specified in or accompanying the institution’s certificate of designation or, if the conditions are varied under section 16, those conditions as varied under that section; 30

“cover assets”—

(a) in relation to a designated or formerly designated mortgage credit institution, means mortgage credit assets, cover assets hedge contracts or substitution assets that are held in a cover assets pool maintained by the institution, and 35

(b) in relation to a designated or formerly designated public credit institution, means public credit assets, cover assets hedge contracts or substitution assets that are held in a cover assets pool maintained by the institution; 40

“cover assets hedge contract”—

(a) in relation to a designated or formerly designated mortgage credit institution, means a contract of a kind entered into in accordance with section 29(3), and

5 (b) in relation to a designated or formerly designated public credit institution, means a contract of a kind entered into in accordance with section 42(3);

“cover-assets monitor”, in relation to a designated or formerly designated credit institution, means a person appointed in respect of the institution under *Part 5*;

10 “cover assets pool”—

(a) in relation to a designated or formerly designated mortgage credit institution, means the mortgage credit assets, cover assets hedge contracts and substitution assets held by the institution that are recorded in the register of mortgage covered securities business kept by the institution, and

15 (b) in relation to a designated or formerly designated public credit institution, means the public credit assets, cover assets hedge contracts and substitution assets held by the institution that are recorded in the register of public credit covered securities business kept by the institution;

20 “credit institution” means any of the following:

(a) the holder of a licence under section 9 of the Central Bank Act, 1971;

(b) a building society;

25 (c) a trustee savings bank that holds a licence issued under the Trustee Savings Bank Act, 1989;

(d) ACC Bank plc;

30 (e) a credit institution, as defined in the Codified Banking Directive, that is authorised by a competent authority outside the State for the purposes of that Directive;

“dealing”, in relation to an asset, includes originating, acquiring and disposing of the asset;

“designated credit institution” means either a designated mortgage credit institution or a designated public credit institution;

35 “designated mortgage credit institution” means an institution designated by the Authority in accordance with *Part 3* to carry on the permitted business activities referred to in Section 26(1),

40 “designated public credit institution” means an institution designated by the Authority in accordance with *Part 3* to carry on the permitted business activities referred to in Section 39(1),

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

“European Central Bank” has the meaning given by the Statute of the European System of Central Banks and of the European Central Bank;

“financial asset” has the meaning given by section 496 of the Taxes Consolidation Act, 1997; 5

“financial contract” has the meaning given to it in the Netting of Financial Contracts Act, 1995;

“financial obligation” includes—

- (a) an obligation given as a guarantor or surety, and
- (b) an obligation that is indirect, and 10
- (c) an obligation that is contingent on the happening of some event;

“formerly designated credit institution” means an institution that was formerly registered as either a mortgage credit institution or a public credit institution; 15

“functions” includes duties and responsibilities;

“holder”, in relation to an asset covered security, includes any person who has a right to or an interest in the security, whether or not the right or interest is direct or indirect or is derived through a custodian, intermediary or any system for settling or clearing securities; 20

“insolvency process” means liquidation, examination, receivership, reorganisation, a moratorium, bankruptcy or any similar process related to the inability of persons to pay their debts, and, in relation to a designated or formerly designated credit institution, includes any process relating to the insolvency or potential insolvency of the institution; 25

“insolvent”, in relation to a designated or formerly designated credit institution, has the meaning given by *section 7*;

“manager” means a person appointed in respect of a designated or formerly designated credit institution under *Part 6* or *Schedule 1*; 30

“the Minister” means the Minister for Finance;

“mortgage covered security”, in relation to a designated or formerly designated mortgage credit institution, means a security that is issued by the institution in accordance with this Act and is secured over the cover assets that are included in a cover assets pool maintained by the institution; 35

“mortgage credit” has the meaning given by *section 4*;

“mortgage credit asset” means property or an asset held by a designated mortgage credit institution that comprises one or more mortgage credits; 40

“national central bank” has the meaning given by the Statute of the European System of Central Banks and of the European Central Bank;

“non-performing”, in relation to assets or property held by a designated credit institution, means such of the assets or property as are—

(a) in default under the terms of the security documents that govern them, or

5 (b) are in the course of being foreclosed or otherwise enforced;

“NTMA” means the National Treasury Management Agency;

“obligation” includes a liability;

10 “parent entity”, in relation to a designated credit institution, has same meaning as is given to the expression “parent company” in the European Communities (Credit Institutions: Accounts) Regulations, 1992;

“performing”, in relation to assets or property held by a designated credit institution, means such of the assets or property as are not non-performing assets;

15 “potentially insolvent”, in relation to a designated or formerly designated credit institution, has the meaning given *section 8*;

“power” includes a right and an authority;

“property” includes an interest in property;

20 “property asset”, in relation to a mortgage credit, means a right or interest in the residential or commercial property over which the mortgage credit is secured;

“prudent market value” means—

25 (a) in relation to a mortgage credit asset or substitution asset held or proposed to be held by a designated mortgage credit institution-the prudent market value as determined in accordance with *section 38*, and

30 (b) in relation to a public credit asset or substitution asset held or proposed to be held by a designated public credit institution-the prudent market value as determined in accordance with *section 51*;

“public credit” has the meaning given by *section 5*;

35 “public credit covered security”, in relation to a designated or formerly designated public credit institution, means a security issued by the institution in accordance with this Act that is secured over the cover assets that comprise a cover assets pool maintained by the institution;

“public credit asset” means property or an asset held by a designated or formerly designated public credit institution that comprises one or more public credits;

40 “record” means any record of information, however compiled, recorded or stored, and includes—

(a) any book, register or other document containing information, and

(b) any disc, tape or other article from which information is capable of being produced in any form capable of being reproduced visually or aurally;

“register of designated mortgage credit institutions” means the register established in accordance with *section 17(1)*; 5

“register of designated public credit institutions” means the register established in accordance with *section 17(2)*;

“register of mortgage covered securities business”, in relation to a designated or formerly designated mortgage credit institution, means the register that the institution is required to keep under *section 35*; 10

“register of public credit covered securities business”, in relation to a designated or formerly designated public credit institution, means the register that the institution is required to keep under *section 48*;

“registered”, in relation to a designated credit institution, means registered under Part 3; 15

“regulatory notice” means a regulatory notice published by the Authority under a provision of this Act;

“the regulations” means regulations made by the Authority, and in force under this Act;

“residential property” means a building or part of a building that is used or is suitable for use as a dwelling, and includes the land on which the building is constructed and premises that are used in conjunction with a dwelling, such as a garden, patio, garage or shed; 20

“secured”—

(a) in relation to asset covered securities issued by a designated credit institution—means secured as provided by *Part 7* over the relevant cover assets pool maintained by the institution to protect and satisfy the claims and rights of the holders of those securities, and 25

(b) in relation to cover assets hedge contracts entered into by such an institution—means secured as so provided to protect and satisfy the claims and rights of the persons with whom the institution has entered into those contracts, and 30

(c) in relation to the cover-assets monitor appointed in respect of such an institution under this Act—means secured as so provided to protect and satisfy the claims and rights of the monitor in connection with the monitor’s appointment as such, and 35

(d) in relation to a manager appointed in respect of such an institution under this Act—means secured as so provided to protect and satisfy the claims and rights of the manager in connection with the manager’s appointment as such; 40

“security document” includes any form of visual representation that can be produced electronically or by any other means; 45

“Statute of the European System of Central Banks and of the European Central Bank” means the statute set out in Protocol (No. 3) (annexed by the Treaty on European Union done at Maastricht on

the 7th day of February, 1992) to the Treaty establishing the European Economic Community done at Rome on the 25 March 1957;

“substitution asset” has the meaning given by *section 6*;

“supervisory enactment” means any of the following:

- 5 (a) the Central Bank Acts, 1942 to 1998;
- (b) the Building Societies Acts, 1989 to 1992;
- (c) the Trustee Savings Bank Acts, 1989 and 2001;
- (d) the ACC Bank Acts, 1978 to 2001;
- 10 (e) regulations made under the European Communities Act, 1972 relating to the regulation or supervision of credit institutions;
- (f) supervisory notices issued by the Central Bank giving effect to directives of the European Union relating to the regulation or supervision of credit institutions
- 15 (g) any statute, regulation or notice amending, replacing or supplementing of those Acts, regulations and notices;

“tier 1 asset” means any property that is designated by the European Central Bank as a tier 1 asset for the purpose of giving effect to the monetary policy of the European System of Central Banks, but, in relation to a designated public credit institution, does not include property that comprises public credit assets;

“tier 2 asset” means property that is, with the approval of the European Central Bank, included in a national central bank’s list of eligible tier 2 assets for the purpose of giving effect to the monetary policy of the European System of Central Banks, but does not include property that comprises a mortgage credit asset, a public credit asset or a substitution asset.

4.—(1) For the purposes of this Act, mortgage credit is any kind of financial obligation in respect of money borrowed or raised that is secured by a mortgage, charge or other security on residential property or commercial property, but only if the property is located in the State or any other EEA country, a category A country or a category B country.

Definition of mortgage credit.

(2) For the purposes of this Act, mortgage credit also includes any kind of credit for the time being designated by order made under *subsection (3)(a)*.

(3) The Minister may, by order notified in the *Iris Oifigiúil*—

- (a) designate credit of a specified kind to be mortgage credit for the purposes of this Act, or
- 40 (b) declare a credit of a specified kind to be no longer mortgage credit for those purposes.

(4) For the purposes of subsection (1), “located” has the meaning given in *section 26(3)*.

5.—(1) For the purposes of this Act, public credit is any kind of financial obligation in respect of money borrowed or raised, where the person who has the obligation is—

- (a) the State or any other EEA country, Canada, Japan, the Swiss Confederation, the United States of America, or a country specified in an order made under *subsection (4)*, or 5
- (b) a country, other than a country to which *paragraph (a)* relates, that is a full member of the Organisation for Economic Co-operation and Development, but only if it has not rescheduled its external debt during the immediately preceding 5 years, or 10
- (c) any governmental or public entity established in a country to which *paragraph (a) or (b)* relates that has, under the law of the country or a region of that country, power to impose taxes (including levies or rates), or 15
- (d) subject to *subsection (3)*, any other governmental or public entity established in a country to which *paragraph (a) or (b)* relates whose financial obligations have a risk weighting of 20 per cent or less for the purposes of the Codified Banking Directive, or 20
- (e) the European Communities (or any of them) or the European Investment Bank, or
- (f) any other entity established in a country to which *paragraph (a) or (b)* relates that is prescribed by the regulations for the purposes of this section. 25

(2) For the purposes of *subsection (1)*, a financial obligation includes a financial obligation that is in the form of a security that represents other public credit that is securitised as well as one that does not. 30

(3) The reference in *subsection (1)(d)* to a governmental or public entity does not include a credit institution or other financial institution whose financial obligations have the risk weighting referred to in that paragraph only because of its status as such an institution.

(4) The Minister may, by order notified in the *Iris Oifigiúil*, specify for the purposes of *paragraph (a) of subsection (1)* a country other than one specified in that paragraph. 35

(5) For the purposes of this Act, public credit also includes any kind of credit for the time being designated by order made under *subsection (6)(a)*. 40

(6) The Minister may, by order notified in the *Iris Oifigiúil*—

- (a) designate credit of a specified kind to be public credit for the purposes of this Act, or
- (b) declare an asset of a specified kind to be no longer public credit for those purposes. 45

6.—(1) The following assets are substitution assets for the purposes of this Act: Definition of substitution asset.

(a) deposits with an eligible financial institution;

(b) tier 1 assets;

5 (c) any specified kind of property that is for the time being designated by order made under *subsection (3)(a)* to be a substitution asset.

(2) The regulations must provide for a financial institution or class of financial institutions to be designated as an eligible financial institution for the purposes of subsection (1).

(3) The Minister may, by order notified in the *Iris Oifigiúil*—

(a) designate a specified kind of property to be a substitution asset for the purpose of *subsection (1)(c)*, or

15 (b) declare a specified kind of property to be no longer a substitution asset for those purposes.

7.—A designated credit institution becomes insolvent for the purposes of this Act in any of the following circumstances: When designated credit institution becomes insolvent.

20 (a) if the appointment of an examiner in respect of the institution under the *Companies (Amendment) Act, 1990*, is not terminated or stayed within 30 days after the date of the appointment;

(b) if the appointment of a liquidator in respect of the institution is not terminated or stayed within 30 days after the date of the appointment;

25 (c) if the appointment of a receiver over any part of the property or undertaking of the institution is not terminated or stayed within 30 days after the date of the appointment;

(d) if the institution is a company and the company is deemed to be unable to pay its debts as provided by—

30 (i) section 2(3) of the *Companies (Amendment) Act, 1990*, or

(ii) section 214(b) or (c) of the *Companies Act, 1963*;

35 (e) if the institution is a building society and the High Court makes an order under section 109 of the *Building Societies Act, 1989*, directing the society to be wound up on the ground that it is unable to pay its debts;

(f) if the institution is the holder of a licence issued under section 9 of the *Central Bank Act, 1971* and—

40 (i) the institution is deemed to be unable to meet its obligations under section 28(1) of that Act, or

(ii) the institution is deemed to have committed an act of bankruptcy or to be unable to pay its debts under section 29(4) of that Act;

45 (g) if the institution has, in relation to an asset covered security that it has issued, failed to pay an amount payable in respect of the security within 30 days after the amount fell due (unless the failure is attributable to administrative difficulties arising from circumstances that are outside the control of the institution).

When designated credit institution becomes potentially insolvent.

**8.**—A designated credit institution becomes potentially insolvent for the purposes of this Act in any of the following circumstances:

- (a) if a petition for the appointment of an examiner is presented in relation to the institution under the Companies (Amendment) Act, 1990; 5
- (b) if a petition is presented, or an effective resolution is passed, for the appointment of a liquidator in relation to the institution;
- (c) if a receiver over any assets of the institution is appointed;
- (d) if the institution has, in relation to an asset covered security 10 that it has issued, failed to pay an amount payable in respect of the security within 10 days after the amount fell due (unless the failure is attributable to administrative difficulties arising from circumstances that are outside the control of the institution). 15

## PART 2

### FUNCTIONS AND POWERS OF AUTHORITY

Functions of Authority under this Act.

**9.**—(1) The functions of the Authority are as follows:

- (a) to designate credit institutions for the purposes of this Act;
- (b) to administer the system of supervision and regulation of 20 designated credit institutions in accordance with this Act in order to promote the maintenance of the proper and orderly regulation and supervision of those institutions, and
- (c) to perform such other functions as are prescribed by or 25 under this Act.

(2) The Authority is required to perform its functions so as to fulfil the purposes of this Act.

(3) The Authority has, in relation to designated credit institutions and other persons to whom this Act relates, the functions imposed 30 and the powers conferred on the Central Bank by or under the supervisory enactments in relation to credit institutions within the scope of those Acts, except as required or provided by this Act and subject to such modifications to those functions and powers as are necessary in order to adapt those functions and powers for the pur- 35 poses of this Act.

General powers of Authority under this Act.

**10.**—(1) The Authority has power to do all things necessary or expedient to be done for or in connection with, or incidental to, the performance of its functions.

(2) A power conferred by *subsection (1)* is not to be taken to be 40 limited merely by implication from another provision, whether of this or any other Act, that confers a power on the Authority.

Power of Minister to impose additional functions on Authority.

**11.**—(1) The Minister may, by order notified in the *Iris Oifigiúil*, impose on the Authority functions additional to those specified in 45 *section 9*.

(2) In making an order under this section, the Minister is required to have regard to the purposes of this Act and, in particular, *section 9*.

## DESIGNATION OF CREDIT INSTITUTIONS

**12.—(1)** A person shall not—

Offence to carry on  
asset covered  
securities business  
without designation  
of Authority.

(a) purport to issue mortgage covered securities in accordance  
with this Act, or

(b) represent or advertise that the person is a designated mort-  
gage credit institution, or is authorised by this Act to  
carry on a business involving the issue of mortgage  
covered securities, or

(c) claim to have the benefits conferred on designated mortgage  
credit institutions by or under this Act,

unless the person is registered as a designated mortgage credit insti-  
tution in accordance with this Part.

(2) A person shall not—

(a) purport to issue public credit covered securities in accord-  
ance with this Act, or

(b) represent or advertise that the person is a designated public  
credit institution, or is authorised by this Act to carry  
on a business involving the issue of public credit covered  
securities, or

(c) claim to have the benefits conferred on designated public  
credit institutions by or under this Act,

unless the person is registered as a designated public credit insti-  
tution in accordance with this Part.

(3) A person who contravenes *subsection (1) or (2)* commits an  
offence and is liable—

(a) on conviction on indictment, to a fine not exceeding  
€250,000 (£196,891), or

(b) on summary conviction, to a fine not exceeding €1,900  
(£1,496.37).

**13.—(1)** An eligible person may apply to the Authority to be  
registered as a designated mortgage credit institution or as a desig-  
nated public credit institution.

Application for  
registration as a  
designated credit  
institution.

(2) A person is an eligible person for the purposes of this section  
only if it is a credit institution incorporated or formed in the State  
that holds an authorisation issued by the Central Bank authorising it  
to carry on business as a credit institution.

(3) An application must—

(a) be in a form approved by the Authority, and

(b) contain such information, and be accompanied by such  
documents, as may be requested by the Authority.

(4) The Authority may, by written notice given to an applicant, require the applicant to provide such 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 Authority may reject the application. 5

(5) Nothing in this section prevents the same person from making an application for registration as a designated mortgage credit institution and an application for registration as a designated public credit institution. 10

Grant and rejection  
of applications for  
registration.

**14.—**(1) The Authority may register an applicant as a designated mortgage credit institution only if it is satisfied that the applicant—

(a) is or will be able to carry out, in a proper manner, the responsibilities that a designated mortgage credit institution is required by this Act to carry out, and 15

(b) complies with, or will be able to comply with, such requirements (if any) relating to designated mortgage credit institutions as are prescribed by the regulations and by regulatory notices.

(2) The Authority may register an applicant as a designated public credit institution only if it is satisfied that the applicant— 20

(a) is or will be able to carry out, in a proper manner, the responsibilities that a designated public credit institution is required by this Act to carry out, and

(b) complies with, or will be able to comply with, such requirements (if any) relating to designated public credit institutions as are prescribed by the regulations and by regulatory notices. 25

(3) In granting an application, the Authority may impose such conditions (other than conditions prescribed by the regulations or by a regulatory notice) on the applicant with respect to the orderly and proper regulation of the applicant's business as it considers appropriate. 30

(4) On granting an application for registration as a designated mortgage credit institution, the Authority shall— 35

(a) record the appropriate particulars of the applicant in the register of designated mortgage credit institutions, and

(b) issue the applicant with a certificate of registration as a designated mortgage credit institution,

and, if the Authority has imposed conditions on the applicant under subsection (3), shall specify those conditions in the certificate or in one or more documents that accompany the certificate. 40

(5) On granting an application for registration as a designated public credit institution, the Authority shall—

(a) record the appropriate particulars of the applicant in the register of designated public credit institutions, and 45

(b) issue the applicant with a certificate of registration as a designated public credit institution,

and, if the Authority has imposed conditions on the applicant under subsection (3), shall specify those conditions in the certificate or in one or more documents that accompany the certificate.

(6) On granting an application for registration as a designated public credit institution, the Authority is also required to give to the Revenue Commissioners written notice of—

(a) the name of the institution concerned, and

(b) the address of the principal place of business of that institution and, if the address of its registered office is different from that address, the address of that office.

(7) The Authority may not reject an application without giving the applicant an opportunity to make representations in writing as to why the application should not be rejected.

(8) If the Authority rejects an application, it shall immediately give to the applicant written notice of the rejection, which must include a statement setting out the reasons for the rejection.

**15.—**(1) Registration as a designated mortgage credit institution authorises the institution named in the certificate of registration to carry on the business of a designated mortgage credit institution in accordance with this Act. Effect and term of registration.

(2) Registration as a designated public credit institution authorises the institution named in the certificate of registration to carry on the business of a designated public credit institution in accordance with this Act.

(3) A designated credit institution shall comply with the conditions contained in its certificate of registration or in any document that was issued with the certificate.

(4) The fact that the Authority has registered a person as a designated credit institution does not of itself make the Authority liable for any financial loss incurred by a person—

(a) because the institution, any of its officers, employees or agents, or any covered-asset monitor or manager appointed in respect of the institution has contravened or failed to comply with a provision of this Act or any relevant regulatory notice issued under this Act, or any condition of the institution's registration, or

(b) because the institution has become subject an insolvency process.

(5) The registration of a designated mortgage credit institution or a designated public credit institution remains in force until the registration is revoked under this Part.

**16.—**(1) The Authority may from time to time vary a condition of a designated credit institution's registration or impose on the institution a new condition, but only after giving to the credit institution concerned notice in writing of its intention to do so and after giving Authority may vary conditions of registration.

the institution an opportunity to be heard by, or to make written representations to, the Authority in relation to the proposed variation or proposed new condition.

(2) This section does not empower the Authority to vary a condition that is imposed on a designated mortgage credit institution or a designated public credit institution by the regulations or by a regulatory notice. 5

Registers of designated credit institutions to be kept.

**17.—**(1) The Authority is required to establish and keep a register of designated mortgage credit institutions.

(2) The Authority is also required to establish and keep a register of designated public credit institutions. 10

(3) The register of designated mortgage credit institutions must contain the name and the address of the principal place of business of each designated credit institution and such other information as the Authority determines. 15

(4) The register of designated public credit institutions must contain the name and the address of the principal place of business of each designated public credit institution and such other information as the Authority determines.

(5) A register may be in book form, electronic form or such other form as the Authority 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. 20

(6) The registers are to be kept at the head office of the Authority.

(7) Members of the public are entitled, without charge, to inspect either of the registers during the ordinary business hours of the Authority. However, the Authority may impose a reasonable charge for providing a copy of a register or of an entry in a register. 25

(8) The Authority 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 Authority a list of designated mortgage credit institutions and designated public credit institutions. If the regulations so require, the list must contain such other particulars as are prescribed by the regulations. 30

Revocation of registration by Authority on application of credit institution.

**18.—**The Authority may revoke the registration of a designated mortgage credit institution, or a designated public credit institution, on the application of the institution, but only if it is of the opinion that the institution has fully satisfied all claims and liabilities that are secured in respect of the institution as provided by *Part 7*. 35

Revocation of registration by Authority otherwise than on application of credit institution.

**19.—**(1) The Authority may revoke the registration of a designated credit institution on being satisfied on reasonable grounds that— 40

(a) the institution has not begun to carry on any business of a designated credit institution within 12 months after the date on which the registration was notified to the institution, 45

- (b) the institution has not carried on any such business within the immediately preceding 6 months,
- (c) the registration was obtained by means of a false or misleading representation,
- 5 (d) the institution has contravened or is contravening, or has failed or is failing to comply with a provision of this Act or a regulatory notice,
- (e) the institution has become subject to an insolvency process,
- 10 (f) the institution no longer has sufficient “own funds” (as referred to in the *Codified Banking Directive*),
- (g) the cover assets comprised in a cover assets pool maintained by the institution do not comply with any provision of *Part 4*,
- 15 (h) the business of, or the corporate structure of, the institution has been so organised to such an extent that the institution can no longer be supervised to the satisfaction of the Authority,
- (i) the institution has come under the control of any other entity that is not supervised by the Authority to such an extent that the institution can no longer be supervised to the satisfaction of the Authority,
- 20 (j) since the institution was registered as a designated credit institution, the circumstances under which the registration was given have changed to the extent that an application for registration would be refused had it been made in the changed circumstances, or
- 25 (k) the institution, or any of its officers, is convicted on indictment of—
  - (i) an offence under this Act or under any other enactment prescribed by the regulations for the purpose of this section, or
  - 30 (ii) an offence involving fraud, dishonesty or breach of trust.

35 (2) The Authority may revoke the registration of a designated credit institution under this section only with the consent of the Minister.

(3) Before seeking the consent of the Minister to the revocation of the registration of a designated credit institution, the Authority shall, by notice in writing given to the institution, inform the institution of its intention to seek that consent. The notice must specify—

40

- (a) the grounds on which it is proposed to seek the Minister’s consent, and
  - (b) that the institution may, within 21 days after the giving of the notice, make written representations to the Authority showing why the registration should not be revoked.
- 45

(4) Not later than 21 days after being given a notice under *subsection (3)*, the institution concerned may make written representations to the Authority showing why the registration should not be revoked.

(5) The Authority may seek the Minister's consent to the revocation of the registration of the institution, and the Minister may give that consent only after having considered any representations made by the institution in accordance with *subsection (4)*. 5

(6) If the Authority revokes the registration of a designated credit institution under this section, it shall give written notice of the revocation to the institution. The notice must include a statement of the reasons for revoking the registration. 10

(7) Unless the High Court otherwise orders, revocation of the registration of a designated credit institution under this section takes effect on and from the date of the notice or, if a later date is specified in the notice, on and from that date, irrespective of whether or not the institution appeals against the revocation under *section 25*. 15

Authority may direct designated credit institution to suspend its business.

**20.—**(1) If the Authority reasonably believes that there may be grounds for revoking the registration of a designated credit institution under *section 19*, it may, subject to *Part 7*, give to the institution a direction in writing prohibiting it from engaging in any specified activity referred to in *section 21(5)* except with the permission of the Authority. 20

(2) A direction given under this section—

(a) must include a statement of the Authority's reasons for giving the direction, and 25

(b) remains in force for such period (not exceeding 6 months) as is specified in the direction.

(3) Unless the High Court 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 institution appeals against the direction under *section 25*. 30

(4) A designated credit institution shall comply with a direction given under this section.

(5) The Authority may, by notice in writing given to the institution concerned, amend or revoke a direction given under this section. 35

(6) Without limiting *subsection (5)*, the Authority may from time to time, by notice in writing given to the institution concerned, extend the period during which a direction under this section remains in force by a further period not exceeding 6 months.

(7) A direction given under this section ceases to have effect— 40

(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,

(b) on the making of a winding up order in respect of the institution, or 45

(c) the revocation of the registration of the institution under this Part,

whichever first occurs.

(8) If a direction given under this section is still in effect—

(a) winding up or bankruptcy proceedings may be initiated in respect of the institution concerned,

5 (b) a receiver over the assets of that institution may be appointed, and

(c) the assets of that institution may be attached, sequestered or otherwise distrained,

only if the prior approval of the High Court has been obtained.

10 (9) The High Court may order that all or any part of proceedings before it under this section may be held in closed court if the Court is satisfied that it would, because of the nature or circumstances of the case or that it would be in the interests of justice, be desirable to make such an order.

15 (10) The High Court may make a further order revoking or amending an order made under *subsection (9)*.

**21.—**(1) This section applies to a credit institution if the registration of the institution is revoked under *section 19* and the institution—

Effect of revocation of registration where credit institution is not a company or building society or is a company or building society other than one that is being wound up.

20 (a) is not a company or building society, or

(b) is a company or building society but is not being wound up.

(2) A credit institution to which this section applies is required to continue to carry out the financial obligations of the institution that are secured under *Part 7* until all of those obligations have been fully  
25 discharged to the satisfaction of the Authority.

(3) Within such period as the Authority specifies (not exceeding 30 days) after the institution has been notified that its registration has been revoked, or within such extended period as the Authority may allow, the institution shall give to—

30 (a) the Authority, and

(b) as far as reasonably practicable, every creditor of the institution,

a notice specifying the measures that it is taking or proposes to take to discharge in full its financial obligations. Those measures must  
35 include such measures as are designed to ensure that those obligations in respect of asset covered securities and cover assets hedge contracts will be fully discharged in accordance with the terms of the security documents governing those securities and contracts.

(4) If—

40 (a) the institution fails to give to the Authority a notice in accordance with *subsection (3)* within the required period,

(b) the Authority believes that the institution has failed to take reasonable steps to give the notice to all of its creditors, or

(c) the Authority does not believe that the measures specified in a notice given to it under that subsection are satisfactory; 5

the Authority may, subject to *Part 7*, give the institution a direction in writing prohibiting the institution from engaging in a specified activity without having first obtained the Authority's permission.

(5) The following activities are specified for the purposes of this section and *section 20*: 10

(a) dealing with the institution's assets generally or dealing with any specified class of assets or any specified asset,

(b) engaging in transactions generally or engaging in any specified class of transactions or any specified transaction, 15

(c) making payments generally or making any specified class of payments or any specified payment.

(6) Subject to *Part 7*, the Authority may, either in a direction given under *subsection (4)* or in a later direction, require the institution concerned to prepare and submit to it for its approval within 20 2 months after the direction, a scheme for the orderly discharge of the institution's obligations to its creditors.

(7) A credit institution that fails to comply with a direction given under this section within the permitted period commits an offence and is liable on summary conviction to a fine not exceeding €1,900 25 (£1,496.37).

Effect of revocation of registration where credit institution is a company or building society that is being wound up.

**22.**—(1) This section applies to a credit institution whose registration is revoked under *section 19* and the institution is a company or building society that is being wound up.

(2) Except as otherwise provided by this Act, the liquidator of a credit institution to which this section applies has a duty to ensure that the institution performs the obligations imposed on the institution by or under this Act. 30

(3) The duty imposed by *subsection (2)* is in addition to the liquidator's duties in respect of the winding up of the institution. 35

Authority may substitute other duties for duties of liquidator of credit institution.

**23.**—If a liquidator is appointed in respect of a credit institution whose registration is revoked under this Part, the Authority may, by notice in writing given to the liquidator, substitute for the obligation imposed on the liquidator to comply with *section 22* such other obligations of a similar nature as the Authority specifies in the notice. 40

Provisions of certain other Acts not affected.

**24.**—If the registration of an institution is revoked under this Part and the institution is—

(a) the holder of a licence issued under the *Central Bank Act, 1971*,

(b) a trustee savings bank, 45

(c) a building society, or

(d) ACC Bank plc,

5 the power of the Central Bank to exercise in relation to the institution any power conferred on it by the supervisory enactments is affected only in so far as the exercise of that power would be inconsistent with this Act.

**25.—(1) If the Authority—**

Right to appeal  
against certain  
decisions of the  
Authority.

(a) rejects an application made under *section 13*, or

10 (b) grants the application but imposes conditions (not being conditions prescribed by the regulations) with which the applicant is dissatisfied,

the applicant may appeal to the High Court against the decision of the Authority rejecting the application or imposing the conditions.

15 (2) If a designated credit institution is dissatisfied with a decision of the Authority varying the conditions of registration under *section 16*, the institution may appeal to the High Court against the decision.

(3) If the Authority revokes the registration of a designated credit institution under *section 19*, the institution may appeal to the High Court against the decision of the Authority revoking the registration.

20 (4) If the Authority gives a direction under *section 20* in respect of a designated credit institution, the institution may appeal to the High Court against the direction.

25 (5) An appeal under this section can be made only within 42 days after the decision of the Authority has been notified to the applicant or credit institution concerned.

(6) The High Court may hear an appeal made under this section only if it is satisfied that a copy of the notice of appeal has been served on the Authority.

30 (7) The Authority is entitled to appear as respondent at the hearing of an appeal made under this section.

(8) An appeal made under this section is to be dealt with by way of rehearing.

(9) On the hearing of an appeal, the High Court may make one of the following orders:

35 (a) an order confirming the decision appealed against; or

(b) an order quashing that decision; or

(c) an order substituting for that decision any decision that the Authority could have made in respect of the appellant.

40 (10) The High Court may also make such ancillary orders as it thinks appropriate.

## PART 4

### REGULATION OF DESIGNATED CREDIT INSTITUTIONS

#### CHAPTER 1

##### *Issue of asset covered securities by designated mortgage credit institutions* 5

Interpretation  
(Chapter 1).

**26.—**(1) For the purposes of this Chapter, the following activities are permitted business activities but only if carried out in accordance with this Act—

(a) providing mortgage credit and dealing in and holding mortgage credit assets 10

(b) dealing in and holding substitution assets

(c) dealing in and holding assets of a kind that, in accordance with a requirement of the Authority made under the supervisory enactments, designated mortgage credit institutions are required to hold for regulatory purposes 15

(d) dealing in and holding credit transaction assets

(e) dealing in and holding tier 2 assets

(f) engaging in activities connected with financing or refinancing assets of a kind mentioned in *paragraphs (a) to (e)*

(g) entering into contracts in accordance with *section 29* for the purpose of hedging risks associated with any other activity of a kind mentioned in *paragraphs (a) to (f)* 20

(h) engaging in activities that are incidental or ancillary to carrying on any other activity mentioned in *paragraphs (a) to (g)*, 25

(2) The activities referred to in *subsection (1)(f)* include (but are not limited to)—

(a) taking deposits or other repayable funds from the public, and

(b) issuing asset covered securities. 30

(3) For the purposes of this Chapter—

“credit transaction”, in relation to a designated mortgage credit institution, means—

(a) placing a deposit with an eligible financial institution designated for the purposes of *section 6(1)*, or 35

(b) dealing with or holding a financial asset, or

(c) any other kind of transaction designated in an order made under *subsection (4)(a)*,

in order to facilitate the prudent financial management of property of the institution; 40

“credit transaction asset” means an asset derived from having engaged in a credit transaction (not being a hedge contract entered

into in accordance with *section 29*), but does not include a mortgage credit asset, public credit asset, substitution asset or tier 2 asset;

“located” means—

- 5 (a) in relation to a mortgage credit asset, the country in which the property asset that secures the relevant mortgage credit related to the mortgage credit asset is situated, or
- 10 (b) in relation to a substitution asset (other than a deposit of money), the country in which the entity that has the primary financial obligation (for the purposes of it qualifying as a tier 1 asset) in respect of the asset is formed or established, or
- (c) in relation to a substitution asset that is a deposit of money, the country in which the branch of the financial institution that is holding the deposit is situated.
- 15 (4) The Minister may, by order notified in the *Iris Oifigiúil*—
- (a) designate a transaction of a specified kind to be a credit transaction for the purposes of the definition of “credit transaction” in *subsection (3)*, or
- 20 (b) declare a transaction of a specified kind to be no longer a credit transaction for those purposes.

**27.**—A designated mortgage credit institution may not in its capacity as such carry on an activity other than a permitted business activity.

Designated mortgage credit institution only to engage in permitted activities.

25 **28.**—(1) A designated mortgage credit institution may issue mortgage covered securities, but only in accordance with this Act.

Power of designated mortgage credit institution to issue mortgage covered securities.

(2) A designated mortgage credit institution that issues a mortgage covered security shall ensure that the relevant security document states—

- 30 (a) that the security is a mortgage covered security, and
- (b) that the financial obligations of the institution under the security are secured on the cover assets that comprise a cover assets pool maintained by the institution in accordance with the Act.

35 **29.**—(1) A designated mortgage credit institution may enter into one or more contracts the purpose or effect of which is to reduce or minimise the risk of financial loss or exposure liable to arise from—

Designated mortgage credit institution may enter into certain kinds of contracts.

- (a) fluctuations in interest rates or currency exchange rates, or
- (b) credit risks, or
- 40 (c) other risk factors that may adversely affect its permitted business activities.

(2) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify for the purpose of this section requirements as to—

- (a) the kind of contracts that a designated mortgage credit institution may enter into under *subsection (1)*, and

(b) the terms and conditions under which those contracts, or any class of those contracts, may be entered into.

(3) If a contract of a kind referred to in *subsection (1)* relates to asset covered securities issued by, and mortgage credit assets or substitution assets that are included in a cover assets pool maintained by, a designated mortgage credit institution, the institution shall ensure that the contract complies with the requirements of *subsection (4) and (5)*. 5

(4) A contract of the kind referred to in *subsection (3)* may relate only to— 10

(a) mortgage covered securities issued by the institution, and

(b) mortgage credit assets or substitution assets that are included in a cover assets pool maintained by it.

(5) A contract of the kind referred to in *subsection (3)* must—

(a) state that the contract is a cover assets hedge contract entered into in accordance with this Act and that the financial obligations of the institution under the contract are secured on the cover assets comprised in a cover assets pool maintained by the institution in accordance with this Act, and 15 20

(b) comply with the requirements (if any) specified in any relevant regulatory notice published under *subsection (2)*.

(6) As soon as practicable after entering into a contract of a kind referred to in *subsection (3)*, a designated mortgage credit institution shall ensure that particulars of the contract are entered into its register of mortgage covered securities business. 25

(7) A designated mortgage credit institution must comply with the requirements imposed under *subsection (2)*.

Restrictions on business activities of designated mortgage credit institution.

**30.—**(1) A designated mortgage credit institution shall ensure that the ratio of the total principal amounts of all mortgage assets that it holds to the total prudent market value of the related property assets does not exceed the prescribed percentage. For the purposes of this subsection, the prescribed percentage is 80 per cent or, if the regulations prescribe some other percentage, that other percentage. 30

(2) If a designated mortgage credit institution holds mortgage credit assets or substitution assets that are located in one or more category B countries, the institution shall ensure that the total prudent market value of those assets, expressed as a percentage of the total prudent market value of all of the mortgage credit assets and substitution assets held by institution at the relevant time, does not at any time exceed the prescribed percentage. For the purposes of this subsection, the prescribed percentage is 10 per cent or, if an order under *subsection (4)* specifies some other percentage, that other percentage. 35 40

(3) A designated mortgage credit institution shall ensure that the total value of the credit transaction assets and tier 2 assets that it holds, expressed as a percentage of the total value of the all of the institution's assets, does not at any time exceed the prescribed percentage. For the purposes of this subsection— 45

(a) “value” means the value determined in accordance with *section 38(5)*, and 50

(b) the prescribed percentage is 10 per cent or, if an order under *subsection (4)* specifies some other percentage, that other percentage.

5 (4) The Minister may, by order notified in the *Iris Oifigiúil*, vary the percentage referred to in *subsection (2) or (3)*.

10 (5) For the purpose of ensuring the proper and orderly regulation of designated mortgage credit institutions, the Authority may, by notice in writing given to the institution or institutions concerned, impose on any specified designated mortgage credit institution, or on any class of designated mortgage credit institutions, requirements or restrictions as to the kinds of credit transaction assets or tier 2 assets that the institution or institutions may hold. Any designated mortgage credit institution to which such a notice is given is required to comply with the notice.

15 **31.—**(1) A designated mortgage credit institution may issue mortgage covered securities only if it is maintaining a related cover assets pool that complies with this Chapter.

Designated mortgage credit institution to establish and maintain cover assets pool.

20 (2) After a designated mortgage credit institution is registered, the institution may, for the purpose of establishing a cover assets pool and enabling it to make an initial issue of mortgage covered securities, include in its register of mortgage covered securities business mortgage credit assets or substitution assets in accordance with this Chapter.

25 (3) If a designated mortgage credit institution wishes at any time to issue further mortgage covered securities, it may include in the relevant cover assets pool mortgage credit assets or substitution assets as security for those securities in accordance with this Chapter.

30 (4) Subject to *subsection (6)*, a mortgage credit asset or a substitution asset referred to in *subsection (2) or (3)* forms part of the relevant cover assets pool only if its inclusion has been approved by the relevant cover-assets monitor.

(5) A designated mortgage credit institution may not include a mortgage credit asset or substitution asset in a cover assets pool in the circumstances referred to in *subsection (2) or (3)* if—

35 (a) the mortgage credit asset or substitution asset is currently included in a different cover assets pool maintained by the institution, or

(b) the mortgage credit asset or substitution asset is non-performing, or

40 (c) the institution is insolvent, or

(d) the Authority has given the institution a relevant direction under *section 34(9)*, the effect of which is to prohibit the asset from being recorded in the institution's register of mortgage covered securities business, or

45 (e) the Authority has given the institution a notice under *section 19(3)* informing the institution that the Authority intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated credit institution, or

- (f) the Authority has given a direction under *section 20 or 21*, the effect of which is to prohibit the asset from being recorded in the institution's register of mortgage covered securities business.

(6) A designated mortgage credit institution may not, without the consent of the Authority, include a mortgage credit asset or substitution asset in a cover asset pool maintained by the institution in the circumstances contemplated by *subsections (2) or (3)* if— 5

- (a) the institution is potentially insolvent, or
- (b) there is currently no cover-assets monitor appointed in respect of the institution. 10

(7) A designated mortgage credit institution shall ensure—

- (a) that a cover assets pool maintained by the institution has a duration of not less than that of the mortgage covered securities that relate to the pool, and 15
- (b) that the prudent market value of the pool is greater than the total of the principal amounts of those securities, and
- (c) that the total amount of interest payable in a given period of 12 months in respect of the pool is during that 12 month period not less than the total amount of interest payable in respect of that period on those securities, and 20
- (d) that the currency in which each mortgage credit asset and each substitution asset included in the pool is denominated is the same as the currency in which those securities are denominated, 25

after taking into account, in the case of *paragraphs (b), (c) and (d)*, the effect of any cover assets hedge contract that the institution has entered into in relation to the pool and those securities.

(8) For the purposes of *subsection (7)(a)*, “duration” means, in relation to a cover assets pool or mortgage covered securities— 30

- (a) if interest payable in respect a mortgage credit asset or substitution asset included in the pool, or in respect of the securities, is variable, a discounted weighted average term to maturity of the relevant principal amount of the pool or securities, or 35
- (b) if interest payable in respect a mortgage credit asset or substitution asset included in the pool, or in respect of the securities, is fixed, a discounted weighted average term to maturity of the relevant principal and interest payable but unpaid in respect of the pool or securities, 40

determined in accordance with a formula or criteria specified in a regulatory notice made for the purposes of this subsection, using appropriate zero coupon interest rates and taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool and those securities. 45

(9) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify a formula or criteria for the purposes of the definition of “duration” in *subsection (8)*.

5 (10) For the purpose of *subsection (7)(b)*, if the principal amount of a mortgage credit asset included in a cover assets pool represents more than the mortgage loan to value percentage of the prudent market value of the related property assets, the amount by which the principal amount of the asset exceeds the loan to value percentage is to be disregarded.

10 (11) For the purposes of this section, the prudent market value of a property asset which relates to a mortgage credit asset is required to be calculated only at the time when the related mortgage credit asset is included in the cover assets pool.

32.—(1) Any mortgage credit asset or substitution asset located within an EEA country may be included in a cover assets pool maintained by a designated institution.

What can be included in a cover assets pool maintained by a designated mortgage credit institution.

15 (2) A designated mortgage credit institution may not include in a cover assets pool maintained by the institution a mortgage credit asset or substitution asset that is located within one or more category A countries if, after the inclusion of the asset in the pool, the total prudent market value of all mortgage credit assets and substitution assets comprised in the pool located in all such countries would exceed the prescribed percentage of the total prudent market value of all mortgage credit assets and substitution assets that are then included in the pool. For the purposes of this subsection, the prescribed percentage is 15 per cent or, if the regulations prescribe some other percentage, that percentage.

25 (3) A designated mortgage credit institution may include in a cover assets pool maintained by the institution mortgage credit assets or substitution assets that are located within a category B country only if—

30 (a) the country is a country designated by an order made under *subsection (4)*, and

(b) the institution complies with any restrictions specified in the order.

35 (4) The Minister may, by order notified in the *Iris Oifigiúil*, specify a category B country for the purposes of *subsection (3)*. The Minister shall include in such an order restrictions as to the prudent market value of the mortgage credit assets and substitution assets referred to in *subsection (3)* that a designated mortgage credit institution can include in the cover assets pool as a percentage of the total prudent market value of mortgage credit assets and substitution assets included in the pool.

40 (5) A designated mortgage credit institution may not include in a cover assets pool a mortgage credit asset that is secured on commercial property if, after inclusion of the asset in the pool, the total prudent market value of all mortgage credit assets so secured would exceed the prescribed percentage of the total prudent market value of all mortgage credit assets and substitution assets then comprised in the pool. For the purposes of this subsection, the prescribed percentage is 10 per cent or, if the regulations prescribe some other percentage, that other percentage.

50 (6) A designated mortgage credit institution may not include in a cover assets pool a mortgage credit asset if a building related to that mortgage credit asset is being or is to be constructed until the building is ready for occupation as a commercial or residential property.

What action is to be taken by a designated mortgage credit institution that is in breach of cover assets pool provisions.

**33.—**(1) A designated mortgage credit institution shall, as soon as practicable after becoming aware that it has contravened *section 31(1), (4), (5) or (6) or section 32(2), (3), (5) or (6)*, take all possible steps to prevent the contravention from continuing or being repeated. Until those steps have been taken, the institution may not issue any further mortgage covered securities. 5

(2) A designated mortgage credit institution is required, as soon as practicable after becoming aware that it has failed to comply with *section 31(7)* to take all possible steps to comply with the subsection. Until those steps have been taken, the institution may not issue any further mortgage covered securities. 10

(3) Where appropriate, the steps to be taken under this section include acquiring other mortgage credit assets or substitution assets for inclusion in the cover assets pool.

Substitution of certain cover assets and restrictions on inclusion of substitution assets in cover assets pool of designated mortgage credit institution.

**34.—**(1) For the purposes of this section, “underlying asset”, in relation to a cover assets pool maintained by a designated mortgage credit institution, means a mortgage credit asset or a substitution asset that is then included in the pool. 15

(2) Subject to *subsection (6)*, a mortgage credit asset or a substitution asset that replaces an underlying asset forms part of the relevant cover assets pool only if the replacement has been approved by the relevant cover-assets monitor. 20

(3) If an underlying asset included in a cover assets pool maintained by a designated mortgage credit institution contravenes or fails to comply with a provision of this Chapter, the regulations or a requirement of the Authority or the relevant cover-assets monitor made under such a provision, the institution shall, in accordance with this section, replace the underlying asset with a mortgage credit asset or substitution asset that the institution has acquired for the purpose or is currently holding. 25 30

(4) A designated mortgage credit institution may in any other case replace an underlying asset with a mortgage credit asset or a substitution asset that the institution has acquired for the purpose or is currently holding, but only if the replacement is not prohibited by a provision of this Chapter, the regulations or a requirement of the Authority or of the relevant cover-assets monitor under such a provision. 35

(5) A designated mortgage credit institution may not replace an underlying asset with a mortgage credit asset or a substitution asset if— 40

- (a) the mortgage credit asset or substitution asset is currently contained in a different cover assets pool maintained by the institution,
- (b) the mortgage credit asset or substitution asset is non-performing, 45
- (c) the institution is insolvent,
- (d) the Authority has given to the institution a relevant direction, the effect of which is to prohibit the replacement from being made,

- (e) a notice has been given by the Authority under *section 19(3)* informing the institution that it intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated credit institution, or
- 5 (f) the Authority has given a direction under *section 20 or 21* that prevents the replacement from being made.

(6) A designated mortgage credit institution may not, without the consent of the Authority, replace an underlying asset with a mortgage credit asset or a substitution asset if—

- 10 (a) the institution is potentially insolvent, or
- (b) there is currently no cover-assets monitor appointed in respect of the institution.

(7) A designated mortgage credit institution may not at any time include a substitution asset in a cover assets pool maintained by the institution if, after including the asset in the pool, the total prudent market value of all substitution assets then included in the pool at the relevant time would exceed the prescribed percentage of the total prudent market value of all cover assets included in the pool. For the purposes of this subsection, the prescribed percentage is 20 per cent or, if an order under *subsection (8)* specifies some other percentage, that other percentage.

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(8) The Minister may, by order notified in the *Iris Oifigiúil*, vary the percentage referred to in *subsection (7)*.

(9) For the purposes of *subsection (5)(d)* and *section 31(5)(d)*

25 “relevant direction” means a direction issued under—

- (a) *section 11 or 21 of the Central Bank Act, 1971*,
- (b) *section 26 of the Trustee Savings Bank Act, 1989*, or
- (c) *section 40 (2) of the Building Societies Act, 1989*.

35 **35.—(1)** A designated mortgage credit institution shall establish and keep a register in respect of—

Designated mortgage credit institution to keep register of mortgage covered securities business.

- (a) the mortgage covered securities that it has issued,
- (b) the cover assets hedge contracts that it has entered into, and
- (c) the mortgage credit assets and substitution assets that it holds as security for those securities and contracts.

35 (2) The register is to be called the register of mortgage covered securities business.

(3) The register may be kept in book form, in electronic form or in any other form so long as the register is capable of being reproduced visually.

40 (4) The institution shall include in the register the following particulars:

- (a) particulars of the mortgage covered securities that it has issued,

- (b) the cover assets hedge contracts that it has entered into,
- (c) particulars of the mortgage credit assets and substitution assets that it holds as security for those securities and contracts,
- (d) such other particulars as are prescribed by the regulations for the purposes of this section. 5

(5) Except where the regulations otherwise provide, the institution may make or amend an entry in the register only with the consent of the relevant cover-assets monitor or the Authority.

(6) The institution shall keep the register in such place as may be prescribed by the regulations for the purpose of this subsection. 10

(7) If a designated mortgage credit institution is also a designated public credit institution, the institution is required to keep its register of mortgage covered securities business separate from its register of public credit covered securities business. 15

Authority and cover-assets monitor to have access to register of mortgage covered securities business.

**36.—**(1) The Authority, and each cover-assets monitor appointed in respect of a designated mortgage credit institution, are at all times entitled—

- (a) to have access to the institution's register of mortgage covered securities business, and 20
- (b) to take copies of the register or any entry in it at the expense of the institution.

(2) If the Authority, or the cover-assets monitor appointed in respect of a designated mortgage credit institution, by notice in writing so requires, the institution shall provide the Authority or monitor with a copy of— 25

- (a) any specified register kept by the institution in accordance with this Chapter, or
- (b) any specified entry in such a register.

(3) A reference in this section to the Authority includes a reference to any person authorised by the Authority for the purposes of this section. 30

Financial statements in respect of designated mortgage credit institution.

**37.—**(1) If a designated mortgage credit institution has a parent entity, the entity shall include the following information in its annual consolidated financial statement or in a document accompanying the statement: 35

- (a) the name of the institution and any other particulars required by the regulations with respect to the institution,
- (b) the total amounts of principal outstanding in respect of the mortgage covered securities issued by the institution, 40
- (c) the total amounts of principal outstanding in respect of the cover assets pools that relate to those securities,
- (d) any other particulars prescribed by the regulations for the purposes of this subsection.

- 5 (2) A designated mortgage credit institution shall include the following information in its annual financial statement, or in a document accompanying the statement, in respect of mortgage credit assets that are recorded in the institution's register of mortgage covered securities business:
- 10 (a) the number of mortgage credit assets, as at the date to which the statement is made up, with the amounts of principal outstanding in respect of the related credits being specified in tranches of—
    - (i) €100,000 (£78,756.40 ) or less,
    - (ii) more than €100,000 (£78,756.40) but not more than €200,000 (£157,512.80),
    - (iii) more than €200,000 (£157,512.80)but not more than €500,000 (£393,782), and
    - 15 (iv) more than €500,000 (£393,782),
  - (b) the geographical areas in which the related property assets are located, and the number and percentage of those assets held in each of those areas,
  - 20 (c) whether or not any persons who owe money under mortgage credit assets have defaulted in making payments in respect of those assets when due and payable, and if they have—
    - (i) the number of those assets as at that date, and
    - (ii) the total amount of principal outstanding in respect of those assets at that date,
    - 25
  - (d) whether or not any persons who owed money under mortgage credit assets had, during the immediately preceding financial year of the institution (if any), defaulted in making payments in respect of those assets when due and payable, and if they had, the number of those assets that were in existence at the date to which the financial statement for that year was made up,
  - 30
  - (e) the number of cases in which the institution has replaced mortgage credit assets with other assets because those mortgage credit assets were non-performing,
  - 35
  - (f) the total amount of interest in arrears in respect of mortgage credit assets that has not been written off at that date,
  - (g) the total amount of payments of principal repaid and the total amount of interest paid in respect of mortgage credit assets,
  - 40
  - (h) in relation to any related mortgage credits that are secured on commercial property-the number and the total amounts of principal of those credits that are outstanding at that date,
  - 45 (i) any other information prescribed by the regulations for the purposes of this subsection.

**38.—**(1) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of mortgage credit assets or related property assets for the purposes any provision of this Chapter. 5

(2) The prudent market value of mortgage credit assets or related property assets is to be determined in accordance with a regulatory notice published in accordance with *subsection (1)*.

(3) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of substitution assets held by a designated mortgage credit institution for the purposes of this Chapter. 10 15

(4) The prudent market value of substitution assets that are in the form of securities is to be determined in accordance with a regulatory notice published in accordance with *subsection (3)*.

(5) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the value of tier 2 assets, credit transaction assets or the total assets, held by a designated mortgage credit institution for the purposes of this Act. 20

(6) The value of assets referred to in *subsection (5)* is to be determined in accordance with a regulatory notice made under that subsection. 25

## CHAPTER 2

### *Issue of asset covered securities by designated public credit institutions*

**39.—**(1) For the purposes of this Chapter, the following activities are permitted business activities but only if carried out in accordance with this Act: 30

- (a) providing public credit and dealing in and holding public credit assets
- (b) dealing in and holding substitution assets 35
- (c) dealing in and holding assets of a kind that, in accordance with a requirement of the Authority made under the supervisory enactments, designated public credit institutions are required to hold for regulatory purposes
- (d) dealing in and holding credit transaction assets 40
- (e) dealing in and holding tier 2 assets
- (f) engaging in activities connected with financing or refinancing assets of a kind mentioned in *paragraphs (a) to (e)*
- (g) entering into contracts in accordance with *section 42* for purpose of hedging risks associated with any other activity of a kind mentioned in *paragraphs (a) to (f)* 45
- (h) engaging in activities that are incidental or ancillary to carrying on any other activity mentioned in *paragraphs (a) to (g)*,

(2) The activities referred to in *subsection (1)(f)* include (but are not limited to)—

(a) taking deposits or other repayable funds from the public, and

5 (b) issuing asset covered securities.

(3) For the purposes of this Chapter—

“credit transaction”, in relation to a designated public credit institution, means—

10 (a) placing a deposit with an eligible financial institution designated for the purpose of *section 6(1)*, or

(b) dealing with or holding a financial asset, or

(c) any other kind of transaction designated in an order made under *subsection (4)(a)*,

15 in order to facilitate the prudent financial management of property of the institution;

“credit transaction asset” means an asset derived from having engaged in a credit transaction (not being a hedge contract entered in accordance with *section 42*), but does not include a public credit asset, mortgage credit asset, substitution asset or tier 2 asset;

20 “located” means—

25 (a) in relation to a public credit asset or a substitution asset (other than a deposit of money), the country in which the entity that has the primary financial obligation (for the purpose of it qualifying as a public credit asset or in the case of a substitution asset which is a tier 1 asset, a tier 1 asset) in respect of the asset is formed or established, or

(b) in relation to a substitution asset that is a deposit of money, the country in which the branch of the financial institution that is holding the deposit is situated..

30 (4) The Minister may, by order notified in the *Iris Oifigiúil*—

(a) designate a transaction of a specified kind to be a credit transaction for the purposes of the definition of “credit transaction” in *subsection (3)*, or

35 (b) declare a transaction of a specified kind to be no longer a credit transaction for those purposes.

**40.**—A designated public credit institution may not in its capacity as such carry on an activity other than a permitted business activity.

Designated public credit institution only to engage in permitted activities.

**41.**—A designated public credit institution may issue public credit covered securities, but only in accordance with this Act.

Power of designated public credit institution to issue public credit covered securities.

40 (2) A designated public credit institution that issues a public credit covered security shall ensure that the relevant security document states—

(a) that the security is a public credit covered security, and

(b) that the financial obligations of the institution under the security are secured on the cover assets that comprise a cover assets pool maintained by the institution, in accordance with this Act.

5

Designated public credit institution may enter into certain kinds of contracts.

**42.—**(1) A designated public credit institution may enter into one or more contracts the purpose or effect of which is to reduce or minimise the risk of financial loss or exposure liable to arise from—

(a) fluctuations in interest rates or currency exchange rates, or

(b) credit risks, or

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(c) other risk factors that may adversely affect its permitted business activities.

(2) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify for the purpose of this section requirements as to—

(a) the kind of contracts that a designated public credit institution may enter into under *subsection (1)*, and

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(b) the terms and conditions under which those contracts, or any class of those contracts, may be entered into.

(3) If a contract of a kind referred to in *subsection (1)* relates to asset covered securities issued by, and public credit assets or substitution assets that are included in a cover assets pool maintained by, a designated public credit institution, the institution shall ensure that the contract complies with the requirements of *subsection (4) and (5)*.

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(4) A contract of the kind referred to in *subsection (3)* may relate only to—

25

(a) public credit covered securities issued by the institution, and

(b) public credit assets or substitution assets that are included in a cover assets pool maintained by it.

(5) A contract of the kind referred to in *subsection (3)* must—

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(a) state that the contract is a cover assets hedge contract entered into in accordance with this Act and that the financial obligations of the institution under the contract are secured on the cover assets comprised in a cover assets pool maintained by the institution in accordance with this Act, and

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(b) comply with the requirements (if any) specified in any relevant regulatory notice published under *subsection (2)*.

(6) As soon as practicable after entering into a contract of a kind referred to in *subsection (3)*, a designated public credit institution shall ensure that particulars of the contract are entered into its register of public credit covered securities business.

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(7) A designated public credit institution is required to comply with any requirements imposed under *subsection (2)*.

- 43.—(1) If a designated public credit institution holds public credit assets or substitution assets that are located in one or more category B countries, the institution shall ensure that the total prudent market value of those assets, expressed as a percentage of the total prudent market value of all of the total public credit assets and substitution assets held by institution at the relevant time, does not exceed the prescribed percentage. For the purposes of this subsection, the prescribed percentage is 10 per cent or, if an order under *subsection (3)* specifies some other percentage, that other percentage.
- (2) A designated public credit institution shall ensure that the total value of the credit transaction assets and tier 2 assets that it holds, expressed as a percentage of the total value of the all of the institution's assets, does not at any time exceed the prescribed percentage. For the purposes of this subsection—
- (a) “value” means the value determined in accordance with *section 51(5)*, and
- (b) the prescribed percentage is 10 per cent or, if an order under *subsection (3)* specifies some other percentage, that other percentage.
- (3) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentage referred to in *subsection (1) or (2)*.
- (4) For the purpose of ensuring the proper and orderly regulation of designated public credit institutions, the Authority may, by notice in writing given to the institution or institutions concerned, impose on any specified designated public credit institution or on any class of designated public credit institutions, requirements or restrictions as to the kinds of credit transaction assets or tier 2 assets that the institution or institutions may hold. Any designated public credit institution to which such a notice is given is required to comply with the notice.
- (5) A designated public credit institution may not issue further public credit covered securities if the total of the principal amounts of all such securities currently issued by the institution would, after the issue of those further securities, exceed the own funds multiple with respect to the total of its own funds.
- (6) For the purposes of *subsection (5)*—
- “own funds”, in relation to a designated public credit institution, means the own funds of the institution as determined in accordance with the Codified Banking Directive;
- “own funds multiple” means a multiple of 50 or, if another number is specified in an order made under *subsection (7)*, the other number.
- (7) The Minister may, by order notified in the *Iris Oifigiúil*, vary the number referred to in the definition of “own funds multiple” in *subsection (6)*.
- 44.—(1) A designated public credit institution may issue public credit covered securities only if it is maintaining a related cover assets pool that complies with this Chapter.
- (2) After a designated public credit institution is registered, the institution may, for the purpose of establishing a cover assets pool

Restrictions on business activities of designated public credit institution.

Designated public credit institution to establish and maintain cover assets pool.

and enabling it to make an initial issue of public credit covered securities, include in its register of public credit covered securities business public credit assets or substitution assets in accordance with this Chapter.

(3) If a designated public credit institution wishes at any time to issue further public credit covered securities, it may include in the relevant cover assets pool public credit assets or substitution assets as security for those securities in accordance with this Chapter. 5

(4) Subject to *subsection (6)*, a public credit asset or a substitution asset referred to in *subsection (2) or (3)* forms part of the relevant cover assets pool only if its inclusion has been approved by the relevant cover-assets monitor. 10

(5) A designated public credit institution may not include a public credit asset or substitution asset in a cover assets pool in the circumstances referred to in *subsection (2) or (3)* if— 15

- (a) the public credit asset or substitution asset is currently included in a different cover assets pool maintained by the institution,
- (b) the public credit asset or substitution asset is non-performing, or 20
- (c) the institution is insolvent,
- (d) the Authority has given the institution a relevant direction referred to in *section 47(9)*, the effect of which is to prohibit the asset from being recorded in the institution's register of public credit covered securities business, 25
- (e) the Authority has given the institution a notice under *section 19(3)* informing the institution that the Authority intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated credit institution, 30
- (f) the Authority has given a direction under *section 20 or 21*, the effect of which is to prohibit the asset from being recorded in the institution's register of public credit covered securities business.

(6) A designated public credit institution may not, without the consent of the Authority, include a public credit asset or substitution asset in a cover asset pool maintained by the institution in the circumstances contemplated by *subsections (2) or (3)* if— 35

- (a) the institution is potentially insolvent, or
- (b) there is currently no cover-assets monitor appointed in respect of the institution. 40

(7) A designated public credit institution shall ensure—

- (a) that a cover assets pool maintained by the institution has a duration of not less than that of the public credit covered securities that relate to the pool, 45
- (b) that the prudent market value of the pool is greater than the total of the principal amounts of those securities,

(c) that the total amount of interest payable in a given period of 12 months in respect of the pool is during that 12 month period not less than the total amount of interest payable in respect of that period on those securities, and

5 (d) that the currency in which each public credit asset and each substitution asset included in the pool is denominated is the same as the currency in which those securities are denominated,

10 after taking into account, in the case of *paragraphs (b), (c) and (d)*, the effect of any cover assets hedge contract that the institution has entered into in relation to the pool and those securities.

(8) For the purposes of *subsection (7)(a)*, “duration” means, in relation to a cover assets pool or public credit covered securities—

15 (a) if interest payable in respect of a public credit asset or a substitution asset included in the pool, or in respect of the securities is variable, a discounted weighted average term to maturity of the relevant principal amount of the pool or securities, or

20 (b) if interest payable in respect of a public credit asset or a substitution asset included in the pool, or in respect of the securities, is fixed, a discounted weighted average term to maturity of the relevant principal and interest payable but unpaid in respect of the pool or securities,

25 determined in accordance with a formula or criteria specified in a regulatory notice made for the purposes of this subsection, using appropriate zero coupon interest rates and taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool and those securities.

30 (9) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify a formula or criteria for the purposes of the definition of “duration” in *subsection (8)*.

35 **45.—**(1) Any public credit asset or substitution asset located within an EEA country or which is a financial obligation of an entity referred to in section 5(1)(e) may be included in a cover assets pool maintained by the designated public credit institution.

What can be included in a cover assets pool maintained by a designated public credit institution.

40 (2) A designated public credit institution may not include in a cover assets pool maintained by the institution a public credit asset or a substitution asset that is located within one or more category A countries if, after the inclusion of the asset in the pool, the total prudent market value of all public credit assets and substitution assets comprised in the pool located in all such countries would exceed the prescribed percentage of the total prudent market value of all public credit assets and substitution assets that are then included in the pool. For the purposes of this subsection, the pre-

45 scribed percentage is 15 per cent or, if the regulations prescribe some other percentage, that percentage.

(3) A designated public credit institution may include in a cover assets pool maintained by the institution public credit assets or substitution assets that are located within a category B country only if—

50 (a) the country is a country designated by an order made under *subsection (4)*, and

(b) the institution complies with any restrictions specified in the order.

(4) The Minister may, by order notified in the *Iris Oifigiúil*, specify a category B country for the purposes of *subsection (3)*. The Minister shall include in such an order restrictions as to the prudent market value of the public credit assets or substitution assets referred to in *subsection (3)* that a designated public credit institution can include in the cover assets pool as a percentage of the total prudent market value of public credit assets and substitution assets included in the pool.

What action is to be taken by a designated public credit institution that is in breach of cover assets pool provisions.

**46.—**(1) A designated public credit institution shall, as soon as practicable after becoming aware that it has contravened *section 44(1), (4), (5) or (6) or section 45(2) or (3)*, take all possible steps to prevent the contravention from continuing or being repeated. Until those steps have been taken, the institution may not issue any further public credit covered securities.

(2) A designated public credit institution shall, as soon as practicable after becoming aware that it has failed to comply with *section 44(7)* take all possible steps to comply with the subsection. Until those steps have been taken, the institution may not issue any further public credit covered securities.

(3) Where appropriate, the steps to be taken under this section include acquiring other public credit assets or substitution assets for inclusion in the cover assets pool.

Substitution of certain cover assets and restrictions on inclusion of substitution assets in cover assets pool of designated public credit institution.

**47.—**(1) For the purposes of this section, “underlying asset”, in relation to a cover assets pool maintained by a designated public credit institution, means a public credit asset or a substitution asset that is then included in the pool.

(2) Subject to *subsection (6)*, a public credit asset or a substitution asset that replaces an underlying asset forms part of the relevant cover assets pool only if the replacement has been approved by the relevant cover-assets monitor.

(3) If an underlying asset included in a cover assets pool maintained by a designated public credit institution contravenes or fails to comply with a provision of this Chapter, the regulations or a requirement of the Authority or the relevant cover-assets monitor made under such a provision, the institution shall, in accordance with this section, replace the underlying asset with a public credit asset or substitution asset that the institution has acquired for the purpose or is currently holding.

(4) A designated public credit institution may in any other case replace an underlying asset with a public credit asset or a substitution asset that the institution has acquired for the purpose or is currently holding, but only if the replacement is not prohibited by a provision of this Chapter, the regulations or a requirement of the authority or of the relevant cover-assets monitor under such a provision.

(5) A designated public credit institution may not replace an underlying asset with a public credit asset or a substitution asset if—

(a) the public credit asset or substitution asset is currently contained in a different cover assets pool maintained by the institution,

- (b) the public credit asset or substitution asset is non-performing,
- (c) the institution is insolvent,
- 5 (d) the Authority has given to the institution a relevant direction, the effect of which is to prohibit the replacement from being made,
- 10 (e) a notice has been given to the institution by the Authority under *section 19(3)* informing the institution that it intends seek the consent of the Minister to the revocation of the registration of the institution as a designated credit institution, or
- (f) the Authority has given a direction under *section 20 or 21* that prevents the replacement from being made.

15 (6) A designated public credit institution may not, without the consent of the Authority, replace an underlying asset with a public credit asset or a substitution asset if—

- (a) the institution is potentially insolvent, or
- (b) there is currently no cover-assets monitor appointed in respect of the institution.

20 (7) A designated public credit institution may not at any time include a substitution asset in a cover assets pool maintained by the institution if, after including the asset in the pool, the total prudent market value of all substitution assets then included in the pool at  
25 the relevant time would exceed the prescribed percentage of the total prudent market value of all cover assets included in the pool. For the purposes of this subsection, the prescribed percentage is 20 per cent or, if an order under *subsection (8)* specifies some other percentage, that other percentage.

30 (8) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentage referred to in *subsection (7)*.

(9) For the purposes of *subsection (5)(d)* and *section 44(5)(d)*, “relevant direction” means a direction issued under—

- (a) section 11 or 21 of the Central Bank Act, 1971, or
- (b) section 26 of the Trustee Savings Bank Act, 1989, or
- 35 (c) section 40 (2) of the Building Societies Act, 1989.

**48.—(1)** A designated public credit institution shall establish and keep a register in respect of—

- (a) the public credit covered securities that it has issued,
- (b) the cover assets hedge contracts that it has entered into, and
- 40 (c) the public credit assets and substitution assets that it holds as security for those securities and contracts.

(2) The register is to be called the register of public credit covered securities business.

Designated public credit institution to keep register of public credit covered securities business.

(3) The register may be kept in book form, in electronic form or in any other form so long as the register is capable of being reproduced visually.

(4) The institution shall include in the register the following particulars: 5

- (a) particulars of the public credit covered securities that it has issued;
- (b) the cover assets hedge contracts that it has entered into;
- (c) particulars of the public credit assets and substitution assets that it holds as security for those securities and contracts; 10
- (d) such other particulars as are prescribed by the regulations for the purposes of this section.

(5) Except where the regulations otherwise provide, the institution may make or amend an entry in the register only with the consent of the relevant cover-assets monitor or the Authority. 15

(6) The institution shall keep the register in such place as may be prescribed by the regulations for the purpose of this subsection.

(7) If a designated public credit institution is also a designated public credit institution, the institution is required to keep its register of public credit covered securities business separate from its register of public credit covered securities business. 20

Authority and cover-assets monitor to have access to register of public credit covered securities business.

**49.—**(1) The Authority, and each cover-assets monitor appointed in respect of a designated public credit institution, are at all times entitled—

- (a) to have access to the institution's register of public credit covered securities business, and 25
- (b) to take copies of the register or any entry in it at the expense of the institution.

(2) If the Authority, or the cover-assets monitor appointed in respect of a designated public credit institution, by notice in writing so requires, the institution shall provide the Authority or monitor with a copy of— 30

- (a) any specified register kept by the institution in accordance with this Chapter, or
- (b) any specified entry in such a register. 35

(3) A reference in this section to the Authority includes a reference to any person authorised by the Authority for the purposes of this section.

Financial statements in respect of designated public credit institution.

**50.—**A designated public credit institution shall include the following information in its annual financial statement or in a document accompanying the statement: 40

- (a) the names of the countries in which the public credit assets included in the cover assets pool maintained by the institution are located, and the number and percentage of

those assets located in each of those countries, as at the date to which the statement is made up;

- (b) such other information as may be prescribed by the regulations for the purposes of this subsection.

5     **51.**—(1) The prudent market value of a public credit asset included in a cover assets pool maintained by a designated public credit institution for the purposes of this Chapter is to be an amount Valuation of assets held by designated public credit institutions.  
10     denominated in the currency in which the related public credit is denominated, equal to 100 per cent of the principal or nominal amount of that public credit that is outstanding on the date that the asset is included in the pool or, if some other percentage is prescribed by the regulations, equal to that other percentage of that principal or nominal amount.

15     (2) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify further requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of public credit assets for the purposes of this Chapter.

20     (3) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of substitution assets held by a designated public credit institution for the purposes of this Chapter.

25     (4) The prudent market value of substitution assets that are in the form of securities is to be determined in accordance with a regulatory notice published in accordance with *subsection (3)*.

30     (5) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the value of tier 2 assets, credit transaction assets or the total assets, held by a designated public credit institution for the purposes of this Act.

35     (6) The value of assets referred to in *subsection (5)* is to be determined in accordance with a regulatory notice published in accordance with that subsection.

### CHAPTER 3

#### *Provisions applicable to asset covered securities generally*

40     **52.**—(1) A person who discloses to an authorised recipient information relating to the business of a designated credit institution is not liable in tort, or for breach of contract, to the institution or any other person in respect of the disclosure if the information was provided in good faith to enable the recipient to perform functions  
45     imposed on the recipient by or under this Act. Protection of disclosures made to an authorised recipient.

(2) The following persons are authorised recipients for the purpose of *subsection (1)*:

- (a) the Authority,

- (b) the NTMA,
- (c) any cover-assets monitor appointed in respect of the relevant designated credit institution under *Part 5*,
- (d) any manager appointed in respect of that institution under *Part 6*, 5
- (e) any officer, employee, agent or authorised person or any person referred to in paragraphs (a) to (d).

Transfer of business or assets from one credit institution to another.

**53.—(1)** A designated credit institution may transfer to another credit institution (including one that is not a designated credit institution) the whole or part of its business, or all of its assets or such of those assets as it specifies, but only with the approval of the relevant person and in accordance with this section. 10

(2) A credit institution that is not a designated credit institution may transfer to a designated credit institution the whole or any specified part of its business, or all of its assets or such of those assets as it specifies, but only with the approval of the relevant person and in accordance with this section. 15

(3) If the Minister's approval is required for a transfer under this section, the Minister is required to consult the Authority before approving the transfer. 20

(4) The transferor credit institution and transferee credit institution are required to jointly submit to the relevant person for approval a scheme for the proposed transfer of the business or assets concerned. The scheme must contain such details as that person may require with respect to that business or those assets. 25

(5) As a prerequisite to giving approval under this section, the relevant person may impose on the parties to the proposed transfer such conditions relating to the scheme as that person thinks necessary for the purpose of—

- (a) safeguarding the interests of the parties to the transfer and of persons who have financial obligations in respect of the business or assets concerned, and 30
- (b) ensuring an orderly transfer of that business or those assets, and
- (c) providing for publication of the proposed transfer. 35

(6) The conditions must specify—

- (a) the date or dates on which the transfer is to take place or how that date or those dates are to be ascertained, and
- (b) how the business or assets concerned are to be transferred.

(7) On being satisfied that a scheme submitted under subsection (4) will achieve the purpose referred to in subsection (5) and that the conditions (if any) imposed by that person in respect of the scheme have or will be complied with, the relevant person— 40

- (a) shall, by order, approve a transfer of the business or assets concerned, and 45

(b) shall publish a notice in respect of the order in one or more daily newspapers circulating in the State.

5 (8) The relevant person may, by further order, vary an approval under subsection (7). If such an approval is varied, the relevant authority shall publish a copy of the order in one or more daily newspapers circulating in the State.

(9) A transfer of a business or assets under this section takes effect—

(a) subject to the conditions of approval, and

10 (b) on the date or dates specified in those conditions.

(10) On the transfer of a business or assets under this section—

15 (a) the transferee credit institution has the same rights (including priorities) and obligations in respect of that business or those assets as the transferor credit institution had immediately before the transfer took effect, and

(b) the transferor ceases to have those rights and obligations.

20 (11) A transfer of an asset under this section, whether specifically or as part of a transfer of a business, does not need to be registered under the *Registration of Deeds Act, 1707*, the *Bills of Sale (Ireland) Acts, 1879 and 1883*, the *Companies Act 1963*, the *Registration of Title Act, 1964*, and any other Act that provides for the registration of assets or details of them. For the purposes of any of those Acts that would apply to it but for this subsection, such a transfer has effect as a deed registered on the date on which it took effect.

25 (12) If legal proceedings are pending immediately before the time when a transfer under this section takes effect, those proceedings are to continue. At that time, the transferee credit institution—

(a) replaces the transferor credit institution as a party to the proceedings, and

30 (b) assumes the same rights and obligations in relations to those proceedings as the transferor credit institution had immediately before that time.

(13) For the purposes of this section, a transferor credit institution is associated with the transferee credit institution if—

35 (a) either of the institutions is the beneficial owner of not less than 90 per cent of the issue share capital of the other institution (whether directly or indirectly through any other person or persons), or

40 (a) a body corporate (other than the transferor or transferee credit institution) is the beneficial owner of not less than 90 per cent of the issued share capital of each of the institutions (whether directly or indirectly through any other person or persons).

(11) In this section—

45 “assets” means mortgage credit assets, public credits assets or substitution assets, or any securities, contracts of guarantee or indemnity or contracts of insurance relating to any such assets or any other

assets connected with all or any part of a business of a credit institution;

“relevant person” means if the relevant credit institutions are not associated, the Minister or, if the relevant credit institutions are associated, the Authority;

5

“security” includes mortgage, assignment, charge, lien, pledge and encumbrance.

PART 5

COVER-ASSETS MONITORS

Cover-assets  
monitor to be  
appointed for each  
designated credit  
institution.

**54.—**(1) Every designated credit institution is required to appoint a qualified person to be a cover-assets monitor in respect of the institution.

10

(2) A designated credit institution that is both a designated mortgage credit institution and a designated public credit institution may appoint a separate cover-assets monitor in respect of each cover assets pool maintained by it or may appoint a single cover-assets monitor in respect of both of the pools so maintained.

15

(3) An appointment under this section does not take effect until the Authority has approved it in writing.

(4) A designated credit institution that has appointed a cover-assets monitor under this section is responsible for paying any remuneration or other money payable to the monitor in connection with the performance of the monitor’s responsibilities in respect of the institution, including any additional responsibilities conferred on the monitor under *section 63*.

20

25

(5) The Authority may, by regulatory notice notified in the *Iris Oifigiúil*, specify—

(a) the qualifications required in order for a person to be appointed as a cover-assets monitor, and

(b) the application procedure for appointment as such a monitor.

30

Authority may  
appoint cover-assets  
monitor in certain  
circumstances.

**55.—**(1) If at any time a designated credit institution has no cover-assets monitor appointed in respect of a cover assets pool and the Authority reasonably believes that the institution is unlikely to appoint such a monitor, the Authority may appoint a suitably qualified person to be a cover-assets monitor in respect of the institution. The appointment may be on such terms and subject to such conditions as the Authority thinks fit.

35

(2) If the Authority has appointed a cover-assets monitor in accordance with this section, the designated credit institution concerned is responsible for paying any remuneration or other money payable to the monitor in connection with the performance of the monitor’s responsibilities in respect of the institution, including any additional responsibilities conferred on the monitor under *section 63*.

40

56.—(1) The cover-assets monitor appointed in respect of a designated mortgage credit institution is responsible for monitoring the institution's compliance with *sections 31(7), 32 (subsection (6) excepted), 34(2) and (7) and 35(4) and (5) and such other matters (if any) relating to the business of such an institution as may be prescribed by the regulations for the purposes of this subsection.*

Responsibilities of cover-assets monitor appointed in respect of designated mortgage credit institution.

(2) Before a designated mortgage credit institution issues mortgage covered securities, or enters into a cover assets hedge contract, the relevant cover-assets monitor shall take reasonable steps to verify—

(a) that the institution will be in compliance with *section 31(7)*, and will not be in contravention of *section 32 (subsection (6) excepted)* and *section 34(7)*, as a result of the institution having issued those securities or entered into such a contract, and

(b) that the institution will comply with the requirements of *section 35(4) and (5)* with respect to keeping its cover mortgage business register, and

(c) such other matters (if any) relating to the business of designated mortgage credit institutions as may be prescribed by the regulations for the purposes of this subsection.

(4) The cover-assets monitor is also responsible for performing such other responsibilities (if any) as are prescribed by the regulations.

(5) The appointment of a person as a cover-assets monitor in respect of a designated credit institution does not absolve the institution from its duty to comply with this Act.

57.—(1) The cover-assets monitor appointed in respect of a designated public credit institution is responsible for monitoring the institution's compliance with *sections 44(7), 47(2) and (7) and 48(4) and (5) and such other matters (if any) relating to the business of such an institution as may be prescribed by the regulations for the purposes of this subsection.*

Responsibilities of cover-assets monitor appointed in respect of designated public credit institution.

(2) Before a designated public credit institution issues public credit covered securities, or enters into a cover assets hedge contract, the relevant cover-assets monitor shall take reasonable steps to verify—

(a) that the institution will be in compliance with *section 44(7)*, and will not be in contravention of *sections 44(1) or 45* as a result of the institution having issued those securities or entered into such a contract, and

(b) that the institution will comply with requirements of *section 48(4) and (5)* with respect to keeping its register of public credit covered securities business, and

(c) such other matters (if any) relating to the business of designated public credit institutions as may be prescribed by the regulations for the purposes of this subsection.

(4) The cover-assets monitor is also responsible for performing such other responsibilities (if any) as are prescribed by the regulations.

(5) The appointment of a person as a cover-assets monitor in respect of a designated public credit institution does not absolve the institution from its obligation to comply with this Act.

Termination of appointment of cover-assets monitor by designated credit institution.

**58.—**(1) A designated credit institution may terminate the appointment of its cover-assets monitor only with the written consent of the Authority. 5

(2) The Authority may, by notice in writing given to the institution and cover-assets monitor concerned, direct a designated credit institution to terminate the appointment of the cover-assets monitor appointed in respect of the institution and to appoint another qualified person in place of that monitor. The notice must specify the reasons for giving the direction. Subject to *subsection (4)*, the institution is required to comply with such a direction. 10

(3) If the Authority issues a notice under *subsection (2)*, the credit institution or cover-assets monitor concerned may, within 7 days of receiving the notice, appeal to the High Court against the giving of the direction. 15

(4) On the hearing of an appeal under *subsection (3)*, the High Court may—

(a) make an order confirming the decision of the Authority, or 20

(b) make an order quashing the direction of the Authority or, if the direction has been implemented, order that the cover-assets monitor concerned be reinstated on the same terms and conditions as those applicable immediately before the implementation of the direction. 25

The High Court may make such ancillary orders as it thinks appropriate.

Resignation of cover-assets monitor.

**59.—**(1) A cover-assets monitor may resign by notice in writing given to the Authority.

(2) The cover-assets monitor is required to include in the notice a statement of the reasons for the resignation. 30

(3) A notice of resignation of a cover-assets monitor takes effect at the end of 30 days, or of such longer period as is specified in the notice, after it is given to the Authority or, if the Authority agrees to the resignation taking effect at the end of a shorter period, at the end of that shorter period. 35

Cover-assets monitor's powers in relation to designated credit institution.

**60.—**(1) The cover-assets monitor appointed in respect of a designated credit institution may, at any reasonable time during ordinary business hours, enter any place at which the institution carries on its business for the purpose of carrying out the monitor's responsibilities in relation to the institution. 40

(2) The cover-assets monitor is required to give the institution reasonable notice of intention to enter a place at which the institution carries on its business.

(3) A cover-assets monitor who enters a place under this section may do any of the following: 45

- (a) inspect the place and examine any record found on the place that the monitor reasonably believes to be relevant to the performance of the monitor's responsibilities in respect of the institution;
- 5 (b) require the institution or any person who is apparently a person concerned in the management of the institution to answer any relevant questions or provide the monitor with such assistance and facilities as is or are reasonably necessary to enable the monitor to exercise or perform
- 10 the monitor's responsibilities;
- (c) require any person in the place to produce for inspection records in so far as they relate to the responsibilities of the monitor;
- (d) make copies of all or any part of those records.
- 15 **61.—**(1) The cover-assets monitor appointed in respect of a designated credit institution may, by notice in writing given to the institution, require it to give to the monitor, within such period as may be specified in the notice, any specified information or record that relates to the responsibilities of the monitor in respect of the institution, but only if the information or record is in the possession, or
- 20 under the control, of the institution.
- (2) A designated credit institution is required to keep the cover-assets monitor informed of—
- 25 (a) payments received by the institution in respect of cover assets included in the relevant cover assets pool, and
- (b) any failure of any person who has a financial obligation in respect of those assets to perform the obligation within the prescribed period after it was due to be performed, and
- 30 (c) any proceedings brought in relation to those assets against any such person by or on behalf of the institution.
- (3) For the purpose of *subsection (2)(b)*, “prescribed period” means 10 days or, if some other period is specified in a regulatory notice made under *subsection (4)*, that other period.
- 35 (4) The Authority may, by regulatory notice published in the *Iris Oifigiúil*, specify a period for the purpose of *subsection (3)*.
- (5) A designated credit institution that, without reasonable excuse—
- 40 (a) fails to comply with a notice in writing referred to in *subsection (1)*, or
- (b) fails to comply with *subsection (2)*,
- commits an offence and is liable on summary conviction to a fine not exceeding €1,000 (£).
- 45 **62.—**(1) As soon as practicable after the cover-assets monitor appointed in respect of a designated credit institution has become aware, or a formed a reasonable suspicion, that the institution has contravened or failed to comply with a provision of this Act that relates to the responsibilities of the monitor, the monitor is required to provide the Authority with a written report of the matter.

Designated credit institution to provide information and documents required by cover-assets monitor.

Duty of cover-assets monitor to report certain matters to Authority.

(2) The cover-assets monitor appointed in respect of a designated credit institution is also required to provide the Authority with such reports, and provide such information, as the Authority notifies to the monitor in writing from time to time with respect to—

- (a) whether or not the institution is, in the opinion of the monitor complying with the provisions of this Act that relate to the responsibilities of the monitor, and 5
- (b) if in the monitor's opinion the institution is not fully complying with any of those provisions, the extent of the non-compliance, 10

The reports and information are to be given to the Authority at such times or at such intervals as the Authority notifies in writing to the monitor.

Authority may confer additional responsibilities on cover-assets monitor.

**63.—**(1) This section applies to the following credit institutions—

- (a) a designated credit institution that has become subject to an insolvency process; 15
- (b) a designated credit institution in respect of which a manager has been appointed under *Part 6*;
- (c) a formerly designated credit institution;
- (d) a designated credit institution in respect of which a direction under *section 20* is in force; 20
- (e) a designated credit institution in respect of which a manager has been appointed under *Part 6* or *Schedule 1*.

(2) The Authority may, by notice in writing given to the cover-assets monitor appointed in respect of a credit institution to which this section applies, confer on that monitor such additional responsibilities as it considers appropriate for the effective management of the affairs of the institution. 25

(3) If a liquidator, examiner, receiver or manager is appointed in respect of a credit institution to which this section applies, the cover-assets monitor appointed in respect of the institution may enter into arrangements with respect to the management of the institution on such matters as may be specified in the notice referred to in *subsection (2)*. Those arrangements— 30

- (a) must include arrangements relating to the payment of the remuneration of, and the costs incurred by, the monitor, and 35
- (b) are to be subject to such conditions (if any) as are specified in that notice or as the Authority may subsequently notify to the monitor in writing. 40

**64.**—If the Authority so directs by notice in writing, the cover-assets monitor appointed in respect of a designated credit institution shall—

Cover-assets monitor to provide reports to Authority on request.

5 (a) prepare for the Authority, or any other person specified by the Authority, such reports, and

(b) provide the Authority or any such person, with such information,

10 at such times or intervals, in relation to the exercise or performance of the monitor’s responsibilities under this Act and the performance by the institution of its obligations under this Act in so far as the monitor is responsible for monitoring the carrying out of those obligations, as the Authority specifies in the direction.

**65.**—The Authority, or any other person that it has authorised for the purposes of this section, may, at any reasonable time—

Power of entry, etc. of Authority or authorised person.

15 (a) enter any premises at which the cover-assets monitor appointed in respect of a designated credit institution carries on its business, and

20 (b) inspect and take copies of any records kept by the monitor in connection with the monitor’s responsibilities under this Act.

## PART 6

### MANAGEMENT OF BUSINESS ACTIVITIES OF DESIGNATED OR FORMERLY DESIGNATED CREDIT INSTITUTIONS IN CERTAIN CIRCUMSTANCES

25 **66.**—For the purposes of this Part, “asset covered business activities”, in relation to a designated or formerly designated credit institution, means the following activities:

Interpretation (Part 6).

(a) issuing asset covered securities and otherwise financing or refinancing the activities referred to in paragraphs (b) to (f) below;

30 (b) entering into cover asset hedge contracts;

(c) dealing with mortgage credit assets, public credit assets, or appropriate substitution assets;

(d) holding cover assets and maintaining the related cover assets pool;

35 (e) the keeping of a register of mortgage covered securities business or public credit covered securities business;

(f) administering and servicing those activities.

40 **67.**—(1) The Authority shall request the NTMA to attempt to locate persons who are suitably qualified for appointment to manage asset covered business activities, or specified asset covered business activities, of a designated credit institution or a formerly designated credit institution in any of the following circumstances:

Authority may appoint manager in respect of designated credit institution or formerly designated credit institution in certain circumstances.

(a) if the institution has become insolvent or potentially insolvent;

(b) if as a result of becoming aware of information provided to the Authority, it is of the opinion that a manager should be appointed under this Part in respect of the institution in order to safeguard the interests of—

(i) holders of asset covered securities issued by the institution, or 5

(ii) persons who have rights under cover assets hedge contracts entered into by the institution, or

(iii) other creditors of the institution;

(c) if the registration of the institution as a designated credit institution is revoked under *section 19* or the institution is subject to a direction given under *section 20 or 21*. 10

(2) If the NTMA is successful in locating one or more suitably qualified persons for appointment to manage specified business activities of the credit institution, it shall give to the Authority the names and qualifications of, and other relevant particulars relating to, the person or persons concerned. 15

(3) If the NTMA has given to the Authority the name of only one person under *subsection (2)* and the Authority is satisfied that the person is suitably qualified to manage asset covered securities business activities of the credit institution concerned, the Authority shall appoint that person as manager of the asset covered securities business activities of that institution, or of such of those activities as are specified in the notice. 20

(4) If the NTMA has given to the Authority the names of 2 or more persons under *subsection (2)* and is satisfied that those persons, or any of those persons, are suitably qualified to manage asset covered securities business activities of the credit institution concerned, the Authority shall appoint the person who appears to the Authority to be the most suitably qualified of those persons. 25 30

(6) On appointing a person as manager under this section, the Authority shall publish in at least one daily newspaper circulating in the State a notice giving particulars of the appointment. Failure to comply with this subsection does not affect the validity of such an appointment. 35

What happens if NTMA's attempts to locate a manager are unsuccessful.

**68.**—If the NTMA's attempt under *section 67* is unsuccessful, or the Authority is not satisfied that any of the persons whose names were given to the Authority under that section is suitable for appointment as manager, the NTMA shall attempt to find an appropriate body corporate to become the parent entity of the institution in place of the existing parent entity (if any) of the institution. 40

What happens if NTMA's attempts to locate a parent entity are unsuccessful.

**69.**—If the NTMA's attempts under *section 67* and *68* are unsuccessful, the Authority shall, by notice published in the *Iris Oifigiúil*, appoint the NTMA as a manager to manage the asset covered securities business activities of the designated credit institution concerned, or such of those activities as are specified in the notice. 45

Fees payable to NTMA.

**70.**—(1) Each designated credit institution is required to pay to the NTMA with respect to the functions imposed on the NTMA by this Part such annual commitment fee as is, and at such times or

within such periods as are, determined by the NTMA. The amount of the fee is subject to the approval of the Authority.

5 (2) A commitment fee is payable under *subsection (1)* irrespective of whether the NTMA has performed, or the Authority has requested the NTMA to perform, any of the functions imposed on the NTMA by this Part.

(3) If a designated credit institution fails to pay a commitment fee on time, the NTMA may, by proceedings brought in a court of competent jurisdiction, recover the fee from the institution as a debt.

10 (4) The NTMA shall use—

(a) any money that it receives under *subsection (1)* or recovers under *subsection (3)*, and

(b) any money that it receives as a result of having been appointed as a manager under *section 69*,

15 for the purposes of enabling it to perform its functions under this Part. If any of the money so received is not required for those purposes, the NTMA is required to use the surplus towards meeting the expenses incurred in performing its functions under the *National Treasury Management Act, 1990*. Failing that, the NTMA is required  
20 to pay the surplus money into the Exchequer.

(5) The *Public Offices Act, 1879*, does not apply to fees payable to the NTMA under this section or *Schedule 1*.

**71.**—Schedule 1 has effect with respect to a manager appointed under this Part. Application of Schedule 1 to managers.

25 **72.**—On the appointment of a manager under this Part, the manager becomes responsible— Effect of appointment of person as manager.

(a) for managing the asset covered securities business of the credit institution concerned, or such of those activities as are specified in the manager's notice of appointment, and

30 (b) for performing the functions and obligations, and exercising the powers, of the institution in so far as they relate to those activities.

**73.**—A manager appointed under this Part— Responsibilities of manager.

35 (a) shall, as soon as practicable after being appointed, assume control of all assets of the institution that relate to the institution's asset covered business activities, or such of those assets as relate to the business activities specified in the manager's notice of appointment, and

40 (b) shall, subject to and in accordance with any direction given by the Authority, carry on the institution's asset covered business activities, or such part of that business as relates to the business activities specified in the manager's notice of appointment, in such manner as appears to the manager to be in the commercial interest of the holders of  
45 asset covered securities issued by the institution and of

persons with whom the institution has entered into cover assets hedge contracts.

Appointment of new manager to be appointed to fill vacancy.

**74.**—If the appointment of a person as manager under this Part ceases before the management is completed or terminated, the Authority shall, in accordance with section 67, request the NTMA to locate suitably qualified persons to replace the person. 5

## PART 7

### EFFECT OF POTENTIAL INSOLVENCY PROCESS ON DESIGNATED OR FORMERLY DESIGNATED CREDIT INSTITUTION

Interpretation (Part 7).

**75.**—(1) In this Part— 10

“preferred creditor”, in relation to a designated or formerly designated credit institution, means any of the following persons:

- (a) the holder of an outstanding asset covered security issued by the institution,
- (b) a person (other than the holder) who has rights under or in respect of any such security by virtue of any legal relationship with the holder, 15
- (c) if the institution has entered into a cover assets hedge contract, the party with whom the institution entered into the contract, 20
- (d) any cover-assets monitor appointed in respect of the institution in under *Part 5*,
- (e) any manager appointed in respect of the institution under *Part 6* or *Schedule 1*.

“related company”, in relation to a designated or formerly credit institution, means a related company within the meaning of *section 140(5)* of the Companies Amendment Act, 1990. 25

(2) Except as provided by *section 81*, the following enactments do not affect the application and operation of this Part in respect of designated and formerly designated credit institutions: 30

- (a) the Companies Acts, 1963 to 1999,
- (b) the Bankruptcy Act, 1988;
- (c) the *Taxes Acts*,
- (d) the supervisory enactments,
- (e) any other enactment or any rule of law relating to an insolvency process. 35

(3) For the purposes of *subsection (2)*, “Taxes Acts” has the same meaning as is given to expression “the Acts” in *section 811(1)(a)* of the Taxes Consolidation Act, 1997.

**76.**—The fact that a designated or formerly designated credit institution, or its parent entity or any company related to the institution, has become insolvent or potentially insolvent does not affect—

Existing rights of certain persons not affected by insolvency or potential insolvency of designated credit institution.

- 5 (a) the claims and rights of holders of asset covered securities issued by the institution, or
- (b) the claims and rights of persons referred to in paragraph (b) of the definition of “preferred creditor” in *section 75(1)*, or
- 10 (c) the claims and rights that the other contracting party has under any cover assets hedge contract entered into by the institution, or
- (d) the appointment of a cover-assets monitor in respect of the institution under *Part 5* and the claims and rights of the monitor in so far as those claims or rights relate to the appointment or arise under this Act, or
- 15 (e) the appointment of a manager in respect of the institution under *Part 6* and the claims and rights of the manager in so far as those claims or rights relate to the appointment or arise under this Act, or
- 20 (f) the functions of the NTMA under *Part 6* and the claims and rights of the NTMA in so far as those claims and rights relate to those functions.

**77.**—(1) If a designated credit institution, or its parent entity or any company related to the institution, becomes subject to an insolvency process, preferred creditors are, for the purpose of satisfying their claims and rights under this Part, entitled to have recourse to the cover assets that are included in the relevant cover assets pool ahead of members of, and contributories to, the institution and all other creditors of the institution, parent entity or company. This subsection applies irrespective of whether the preferred creditors are preferred creditors under any other enactment or any rule of law and whether they are secured or unsecured creditors.

Rights of preferred creditors in relation to cover assets.

(2) Subject to *subsection (3)*, the claims of preferred creditors of a designated credit institution rank equally among themselves but if those claims cannot be fully satisfied they are to abate in proportion to the amounts of those claims.

(3) The claims of preferred creditors referred to in the definition of “preferred creditors” in *section 75(1)* rank ahead of those of any other preferred creditors and equally among themselves, but if the first-mentioned claims cannot be fully satisfied, they are to abate in proportion to the amounts of those claims.

(4) Subject to *section 81*, *subsections (2) and (3)* have effect irrespective of—

- 45 (a) when the security, contract or appointment giving rise to a claim was issued or made, and
- (b) when a claim of a preferred creditor arose,

and irrespective of the terms of that security, contract or appointment.

(5) If the claims of all preferred creditors are not fully satisfied from the proceeds realised from the disposal of cover assets that are included in the relevant cover assets pool of a designated or formerly designated credit institution, those creditors are, with respect to the unsatisfied parts of their claims, to be regarded as unsecured creditors whose claims, subject to *subsection (3)*, rank equally among themselves in any insolvency process relating to the institution. 5

Obligations of designated credit institution to continue despite insolvency process.

**78.—**(1) The obligations of a designated or formerly designated credit institution—

- (a) arising under or in respect of an asset covered security issued by the institution, or 10
- (b) arising under or in respect of any cover assets hedge contract entered into by the institution, or
- (c) towards the cover-assets monitor appointed in respect of the institution, or 15
- (d) towards any manager appointed to manage affairs of the institution, or
- (e) towards the NTMA under *Part 6*,

continue to have effect in relation to the institution, and be enforceable, despite the institution, or its parent entity or a company related to the institution, becoming subject to an insolvency process. 20

(2) If a designated or formerly designated credit institution becomes subject to an insolvency process, the obligation of the institution to appoint and maintain a cover-assets monitor, and the powers of the Authority and the NTMA arising under this Act with respect to the appointment of a manager, continue to have effect until— 25

- (a) the claims of all preferred creditors have been fully satisfied, and
- (b) the functions of each cover-assets monitor and manager appointed in respect of the institution have been fully discharged. 30

Effect of insolvency process on asset covered securities and cover assets hedge contracts of designated credit institutions.

**79.—**(1) If a designated or formerly designated credit institution becomes subject to an insolvency process—

- (a) all asset covered securities issued by the institution remain outstanding, subject to the terms and conditions specified in the security documents under which those securities are created, 35
- (b) every cover assets hedge contract relating to those securities continues to have effect, subject to the terms and conditions of the contract, and 40
- (c) each cover-assets monitor or manager appointed by the institution continues to hold office as such in accordance with the terms and conditions applicable to the appointment, and 45

(d) the institution's obligations under those securities, or any such contract or appointment, continue to be enforceable.

5 (2) Cover assets that are included in a cover assets pool do not form part of a designated or formerly designated credit institution's assets for the purposes of any insolvency process until the claims secured by this Part have been fully satisfied.

10 (3) Cover assets that are included in a cover assets pool are not liable to attachment, sequestration or other form of seizure that would, but for this subsection, be permitted by law so long as claims secured under this Part remain unsatisfied.

15 **80.**—A designated or formerly designated credit institution may not be dissolved under an insolvency process unless the claims and rights of all preferred creditors have been fully satisfied. However, the High Court may make an order dissolving the institution if it is satisfied that the institution has no assets capable of meeting the claims and rights of those creditors.

Designated or formerly designated credit institution not to be dissolved unless claims of preferred creditors have been satisfied.

**81.**—(1) Nothing in this Part affects the application to—

20 (a) an asset covered security issued by a designated or formerly designated credit institution,

(b) a cover assets hedge contract entered into by such an institution, or

(c) a contract relating to the appointment of a cover-assets monitor in respect of the institution,

25 of any enactment or rule of law that would (with respect to circumstances existing at the time when the security was issued or the contract was entered into) prevent the security or contract from being enforced or rendered void on the ground of fraud or misrepresentation or because of the operation of an enactment specified in *subsection (2)*.

This Part not to prevent application of enactment or rule of law relating to fraud, misrepresentation, etc.

(2) The following enactments are specified for the purpose of *subsection (1)*:

(a) section 57, 58 or 59 of the Bankruptcy Act, 1988,

(b) section 286 of the Companies Act, 1963, or

35 (c) section 139 of the Companies Act, 1990.

40 **82.**—(1) If asset covered securities are outstanding, or a cover assets hedge contract is in existence, in relation to a designated credit institution, the institution shall not create a security interest in respect of any cover assets that are included in a cover assets pool if the interest would, but for this Part, adversely affect the priority conferred by this Part of preferred creditors in respect of those assets. If the institution creates any such security interest, the interest is void and any money secured by it is repayable immediately.

Designated credit institution not to create security interest in cover assets if claims of preferred creditors would be adversely affected.

(2) *Subsection (1)* does not prevent a designated credit institution from creating a security interest in respect of cover assets included in a cover assets pool maintained by the institution if—

- (a) the relevant assets are located outside the State, and
- (b) the person who, directly or indirectly, has the benefit of the interest is the same person as the person who is entitled to security over those assets in accordance with the order of priority prescribed by this Part. 5

(3) If a cover asset included in a cover assets pool maintained by a designated credit institution is subject to a security interest and the creation of the interest would contravene *subsection (1)*, the institution shall, in accordance with *section 34* or *47* (as appropriate), replace the asset with one or more assets that are not subject to such a security interest. 10

(4) In this section— 15

“located” has the meaning given by *section 26 or 39* (as appropriate);

“security interest” includes mortgage, charge, pledge, lien and encumbrance.

Certain directions not to apply unless rights of certain persons have been satisfied.

**83.—(1)** This section applies to the following directions:

- (a) a direction given under *section 20* or *21*, 20
- (b) a direction given by the Central Bank under section 11 or 21 of the Central Bank Act, 1971, section 26 of the Trustee Savings Banks Act, 1989, section 27(3) of the Investor Compensation Act, 1998, or section 40(2) of the Building Societies Act, 1989. 25

(2) Unless the Authority has given a notice to the institution under *subsection (3)*, a direction to which this section applies does not have effect with respect to a designated or formerly designated credit institution, its parent entity or any other company related to the institution as regards— 30

- (a) any cover assets that are included in a cover assets pool maintained by the institution,
- (b) any asset covered securities issued by the institution, or
- (c) any cover assets hedge contracts entered into by the institution, 35

until the claims and rights of the holders of those securities, the claims and rights of the other parties to those contracts, and the claims and rights of every cover-assets monitor, and any manager, appointed in respect of the institution, arising out of the performance of their functions, have been fully satisfied. 40

(3) If satisfied on reasonable grounds that a designated or formerly designated credit institution is carrying on its business relating to asset covered securities or a cover assets hedge contract, or the relevant cover assets, so as—

(a) to adversely affect the security of holders of those securities or the other party to the contract, or

(b) to jeopardise the making of payments by the institution in respect of those securities in accordance with the terms of the relevant security documents, or the making of payments by the institution under the contract,

the Authority may, by notice in writing given to the institution, declare that a direction to which this section applies has effect in respect of the institution, its parent entity or any other company related to the institution.

**84.—(1)** If a credit institution that is or was formerly both a designated mortgage credit institution and a designated public credit institution has—

Provisions applicable where credit institution is both designated mortgage credit institution and designated public credit institution.

(a) issued mortgage covered securities, or

(b) entered into a cover assets hedge contract relating to mortgage covered securities issued by the institution,

the rights of the holders of those securities, or the other party to the contract, are secured only on the cover assets that comprise the relevant cover assets pool.

**(2)** If a credit institution that is or was formerly both a designated mortgage credit institution and a designated public credit institution has—

(a) issued public credit covered securities, or

(b) entered into a cover assets hedge contract relating to public credit covered securities issued by the institution,

the rights of the holders of those securities, or the other party to the contract, are secured only on the cover assets that comprise the relevant cover assets pool.

## PART 8

### REGULATIONS, MINISTERIAL ORDERS AND REGULATORY NOTICES

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

Authority may make regulations for purposes of Act.

**(2)** Without limiting *subsection (1)*, regulations under that subsection may do any or all of the following—

(a) prescribe conditions with respect to carrying on asset covered securities business that designated credit institutions must comply with,

(b) prescribe requirements that a designated mortgage credit institution must comply with in maintaining its cover assets pools,

- (c) prescribe requirements that a designated public credit institution must comply with in maintaining its cover assets pools,
  - (d) prescribe kinds of substitution assets that may be included in a cover assets pool, 5
  - (e) prescribe which and in what circumstances mortgage credit assets, or public credit assets, or substitution assets that are included in a cover assets pool are required or permitted to be substituted,
  - (f) prescribe requirements that a designated mortgage credit institution is required to comply with in relation to the institution's register of mortgage covered securities business, 10
  - (g) prescribe requirements that a designated public credit institution is required to comply with in relation to the institution's register of public credit covered securities business, 15
  - (h) prescribe requirements with respect to the financial statements that a designated mortgage credit institution or a designated public credit institution or its parent entity must comply with, 20
  - (i) prescribe requirements that cover-assets monitors, or candidates for appointment as such, are required to comply with,
  - (j) prescribe responsibilities to be carried out by a cover-assets monitor in relation to the designated mortgage credit institution, or designated public credit institution, in respect of which the monitor is appointed, 25
  - (k) provide for the removal and replacement of a cover-assets monitor on specified grounds, 30
  - (l) supplement the provisions of this Act relating to transfers of the whole or a part of an asset covered securities business, or of assets relating to such a business, in accordance with *section 53*,
  - (m) supplement the provisions of *section 96* with respect to entering into reciprocal arrangements with qualifying countries. 35
- (3) A regulation may create an offence for contravening or failing to comply with a provision of the regulation and impose a fine not exceeding €100,000 (£78,756.40) for the offence if tried on indictment or €1,500 (£1,496.37) if dealt with summarily. 40
- (4) A provision of a regulation 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 45

(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.

5     **86.**—The Minister is required to consult the Authority before making an order for the purposes of this Act.

Minister to consult Authority before making order for purposes of this Act.

10     **87.**—The Minister shall ensure that every regulation made by the Authority, and every order made by the Minister under this Act, is laid before each House of the Oireachtas as soon as practicable after it is made.

Regulations and orders to be laid before each House of Oireachtas.

**88.**—(1) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a regulation or order was laid before it in accordance with *section 87*, annul the regulation or order.

House of Oireachtas may annul regulation or order.

15     (2) The annulment of such a regulation or order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the regulation before the passing of that resolution.

20     **89.**—(1) A regulatory notice issued by the Authority comes into operation on the date on which it is published in *Iris Oifigiúil* or on such later date as is specified in the notice.

Regulatory notices.

(2) The Authority may from time to time amend or revoke a regulatory notice it has issued under this Act.

25     (3) For the purpose of *subsection (2)*, “amend” includes add to, substitute and delete.

## PART 9

### ENFORCEMENT

30     **90.**—(1) The High Court may, on the hearing of an application made under this section, make an order prohibiting a person whom it finds to be contravening or to have repeatedly contravened a provision of this Act or a regulatory notice from continuing or repeating the contravention.

Court empowered to make prohibition or compliance orders.

35     (2) The High Court may, on the hearing of an application made under this section, make an order requiring a person to comply with a provision of this Act or a regulatory notice if it finds that the person has failed or is failing to comply with the provision after being requested by the Authority to so comply.

40     (3) The Authority or any person or class of person specified in an order made under *subsection (7)*, may make an application for the purpose of *subsection (1)* or (2).

(4) An order under this section may be made subject to such conditions as the High Court considers appropriate.

(5) If the High Court decides to make an order under *subsection (1) or (2)*, it may also make an order requiring a person to do a specified act.

(6) The High Court may grant an interim order pending the determination of an application under this section. Such an order may be granted on the basis of rebuttable evidence that the person concerned has contravened or is contravening, or has failed or is failing to comply with, a provision of this Act. 5

(7) The Minister may, by order notified in *Iris Oifigiúil*, specify a person, or class of persons, for the purpose of *subsection (3)*. 10

Time within which proceedings for an offence may be brought.

**91.**—Despite section 10(4) of the *Petty Sessions (Ireland) Act, 1851*, or any other Act, proceedings for an offence against this Act may be brought at any time within 2 years after the date alleged to be the date on which the offence was committed.

Offences relating to acts affecting the performance of official functions.

**92.**—(1) A person who— 15

- (a) prevents an authorised person from performing a function imposed by this Act, or obstructs an authorised person who is performing such a function, or
- (b) without reasonable excuse, fails to provide an authorised person with information that is lawfully required by or under this Act, or 20
- (c) provides an authorised person with information required by or under this Act knowing it to be materially false or misleading,

commits an offence and is liable on summary conviction to a fine not exceeding €1,900 (£1,496.37) or to imprisonment for a term not exceeding 6 months, or to both. 25

(2) In this section, “authorised person” means—

- (a) the Authority, or any member or employee of the Authority authorised by it to perform the relevant function on its behalf, or 30
- (b) a cover-assets monitor, or
- (c) the NTMA, or any member or employee of the NTMA authorised by it to perform the relevant function on its behalf, or 35
- (d) a manager appointed in respect of a designated credit institution under *Part 6* or *Schedule 1*.

Offences by bodies corporate.

**93.**—(1) If a body corporate commits an offence against a provision of this Act, each person who was an officer of the body when the offence was committed commits an offence against this section if it is proved that— 40

- (a) the officer willingly participated in, connived at or consented to the commission of the offence by the corporation, or

(b) knowing that the corporation was committing or about to commit that offence, failed to take all reasonably practicable steps to prevent its commission.

5 (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding that for which the corporation is liable for the offence committed by the body corporate.

(3) A person may be proceeded against for an offence against this section whether or not the corporation has been proceeded against or been convicted of the offence committed by the corporation.

10 (2) In this section, “officer”, in relation to a corporation, means a director, manager, executive officer, secretary or other person concerned in the management of the corporation.

## PART 10

### MISCELLANEOUS

15 **94.—**(1) This section applies to the following persons:

Certain persons to be not liable for commission of certain acts and omissions under this Act.

(a) the Minister and any public officer acting under the direction of the Minister

(b) the Authority, members and employees of the Authority, and persons acting under the direction of the Authority

20 (c) the NTMA, the chief executive and employees of the Agency, and persons acting under the direction of the NTMA

25 (d) a cover-assets monitor appointed in respect of a designated credit institution under *Part 5*, officers and employees of the monitor, and persons acting under the direction of the monitor

30 (e) a manager, other than the NTMA, appointed in respect of a designated or formerly designated credit institution under *Part 6* or *Schedule 1*, officers and employees of the manager, and persons acting under the direction of the manager.

35 (2) A person to whom this section applies is not liable in any civil proceedings for any act done, or omitted to be done, by the person for the purposes of, or in connection with, performing or exercising any function or power imposed or conferred on the Minister, the Authority, the NTMA, a cover-assets monitor or manager by or under this Act if the act was done, or was omitted, in good faith for the purposes of this Act.

40 **95.—**The fact that a person is registered under this Act as a designated credit institution, or that a person is in any respect being regulated or monitored under this Act, does not of itself constitute a warranty that the person is solvent or that the person is complying with, or has complied with, this Act, or with obligations imposed on the person by or under this Act.

Designation of credit institution not to be a warranty of solvency, etc.

96.—(1) In this section—

“corresponding law”, in relation to a relevant overseas country, means a law in force in that country which corresponds to, or substantially corresponds to, the provisions of this Act;

“located” has the meaning given by *section 26* or *39* (as appropriate); 5

“relevant overseas country” means—

- (a) an EEA country (other than the State),
- (b) a category A country,
- (c) a category B country designated by an order in force under *section 32(4)* or *45(4)*. 10

(2) This section applies when a corresponding law of a relevant overseas country contains provisions that treat—

- (a) designated credit institutions, and
- (b) the holders of asset covered securities issued by those institutions, 15

no less favourably than their counterparts in that country.

(3) If—

- (a) a credit institution established and authorised in a relevant overseas country has issued securities that, under a corresponding law of that country, are equivalent to or substantially equivalent to asset covered securities issued by a designated credit institution in accordance with this Act, 20
- (b) those securities are, in accordance with that law, secured over or backed by assets that would be eligible to be cover assets for the purposes of this Act if held by a designated credit institution, 25
- (c) assets located in the State provide security or backing to satisfy the claims and rights of holders of those securities, and 30
- (d) that security or backing is equivalent to, or is substantially equivalent to, that to which preferred creditors are entitled under *Part 7*,

the rights and benefits conferred by this Act on preferred creditors referred to in *paragraphs (a)* and *(b)* of the definition of that expression in *section 75(1)* also extend, subject to *section 81* and with such modifications as are prescribed by the regulations, to holders of equivalent securities issued by relevant financial institutions in that country in so far as those securities relate to assets that are located in the State. 40

97.—(1) If, under this Act, a notice (not being a regulatory notice) is required or permitted to be given to a person, the notice may be given—

- (a) where the person is a natural person, by giving it to the person personally or by sending it by prepaid registered letter addressed to the person at the person's usual or last known place of residence or business, or
- 5 (b) where the person is a body corporate—
- (i) by delivering it to a person who is or apparently is concerned in the management of the body, or
- (ii) by leaving it at the registered office of the body with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years,
- 10 (iii) by sending it by prepaid registered letter addressed to the body at that registered office.
- (2) In *subsection (1) (b)*, “registered office” in relation to a body corporate means—
- 15 (a) the office of the body that is the registered office or principal office in accordance with the law under which the body is incorporated,
- (b) if the body is not incorporated in the State, an office registered under a law of the State as a registered office of the body, or
- 20 (c) in the case of a body that has no such registered office or principal office, the principal place of business of the corporation in the State.
- 25 **98.**—Stamp duty is not chargeable on—
- (a) the issue of an asset covered security in accordance with this Act,
- (b) a transfer of such a security, or
- 30 (c) a transfer of a business or a part of a business, or an asset, in respect of which the approval of the Minister or the Authority is required under *section 53*.
- 99.**—The expenses incurred by the Minister in administering this Act are, to such extent as the Minister approves, payable out of money provided by the Oireachtas.
- 35 **100.**—The Acts specified in Schedule are amended as indicated in that Schedule.

Certain documents exempt from stamp duty.

Expenses incurred in administering this Act.

Consequential amendments to other Acts.

## SCHEDULE 1

### PROVISIONS APPLICABLE TO MANAGERS

Section 71

*Managers to whom this Schedule applies.*

1. This Schedule applies to a manager appointed under *Part 6* or this Schedule. 5

*Acting manager.*

2. (1) If, because of illness or absence of a manager who is a natural person, the manager is unable to exercise the functions of his or her office, the Authority may, by notice published in the *Iris Oifigiúil*, appoint a person to act in that office during the manager's illness or absence. 10

(2) The Authority may, at any time, remove from office a person appointed under subclause (1).

(3) If a person other than the NTMA is appointed under this paragraph, the person is taken to be a manager appointed under *section 67*. 15

*Vacation of office.*

3. (1) The office of manager becomes vacant if the manager (being a natural person)—

(a) dies, or 20

(b) resigns the office by a letter addressed to the Authority, or

(c) is removed from office by the Authority under paragraph (2), or

(d) is adjudicated bankrupt or makes a composition with creditors, or 25

(e) is disqualified or restricted from being a director of a company, or

(f) is convicted of an offence involving fraud, dishonesty or a breach of trust, or

(g) is convicted in Ireland of an indictable offence or is convicted elsewhere than in Ireland of an offence that, if committed in Ireland, would be such an offence. 30

(2) The office of manager becomes vacant if the manager (being a body corporate)—

(a) becomes insolvent or potentially insolvent, or 35

(b) resigns the office by a letter addressed to the Authority, or

(c) is removed from office by the Authority under paragraph (2), or

(d) is convicted of an offence involving fraud, dishonesty or a breach of trust, or 40

(e) is convicted in Ireland of an indictable offence or is convicted elsewhere than in Ireland of an offence that, if committed in Ireland, would be such an offence.

(3) The Authority may at any time, by notice published in the *Iris Oifigiúil*, remove a manager from office for proven misconduct.

*Fees and expenses of manager.*

5 4. (1) A designated or formerly designated credit institution in respect of which a manager is appointed is required to pay to the manager—

10 (a) such remuneration as the Authority determines for performing the manager's responsibilities in relation to managing asset covered business activities on behalf of the institution, and

(b) such expenses as the manager reasonably incurs in carrying out those activities.

15 (2) The manager may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable under *paragraph (1)*.

## SCHEDULE 2

### CONSEQUENTIAL AMENDMENTS TO OTHER ACTS *Section 100*

#### PART 1

#### *AMENDMENT OF BUILDING SOCIETIES ACT, 1989*

20	Item No.	Section affected	Amendment
	1	Section 2(1)	(a) Insert the following definition after the definition of “deposit”:  25 “‘designated credit institution’ means a credit institution registered under the <i>Asset Covered Securities Act, 2001</i> ”;  (b) In the definition of “housing loan”, insert “or 22A” after “section 22”. 30
	2.	Section 9(2)	Substitute “any ancillary, incidental or necessary powers that are related to the furtherance or achievement of” for “any incidental powers that are necessary for the achievement of”. 35
	3.	Section 16	Insert the following subsection after subsection (2):  40 “(2A) Subsection (2) continues to apply to a person referred to in that subsection even if the society's rights in respect of the loan are sold, transferred, or otherwise disposed of under section 18(6).”
45	4.	Section 18(1)	Substitute the following paragraphs for paragraphs (a) and (b):

- “(a) by issuing shares of a specified denomination or specified denominations, either with or without accumulation of interest, on terms that the funds concerned may be repaid, and 5
- (b) by borrowing or raising money by means of deposits received from people or issuing securities, or by any other means (other than the issue of shares of the kind referred to in paragraph (a)).”.
5. Section 18 Substitute the following subsection for subsection (3): 15
- “(3) A society shall ensure that its total liabilities under subsection (1)(b) do not exceed such proportion of its total liabilities under subsection (1)(a) as the Central Bank specifies in a notice given to the society. 20
6. Section 18 Substitute the following subsections for subsection (5):
- “(5) A society may give security for— 25
- (a) any money that it borrows or raises, or
- (b) any money borrowed or raised by a body corporate or an approved housing body in which it has invested or supported in accordance with section 28. 30
- (5A) Any such security may include mortgages held by the society and any interest in those mortgages, subject to compliance by the society with— 35
- (a) any requirements made under subsection (6), and
- (b) the requirement to obtain the approval of the Central Bank, and 40
- (c) the terms of those mortgages.
- (5B) For the purposes of subsections (5) and (5A), ‘security’ means a mortgage, sub-mortgage, charge (including a floating charge), sub-charge, lien, pledge, assignment by way of security or any security of any other kind recognised by law.”. 45 50

7.	Section 18	Substitute the following subsections for subsection (6):
5		“(6) A society may sell, transfer or otherwise dispose of mortgages, or any interest in those mortgages, that it holds as security for money that it has lent, together with any relevant security that it holds in relation to those mortgages.
10		(6A) The Central Bank may, from time to time, serve on a society a direction specifying requirements that the society must comply with in relation to its exercise of the powers conferred by subsection (5), (5A) or (6).
15		(6B) A society shall comply with requirements specified in a notice given to it in accordance with subsection (6A).”.
20	8. Section 22A	Insert the following section after section 22:
25	Housing loans by associated designated credit institutions.	22A.—(1) In this section—  ‘associated designated credit institution’, in relation to a building society, means a designated credit institution in which the society has invested in accordance with section 28(1);  ‘related building society’ means a building society that has invested in a designated credit institution in accordance with section 28.  (2) An associated designated credit institution may make to a person a loan on the security of a mortgage of a freehold or leasehold estate or interest in a house for the purpose of enabling the member to provide or improve the house or to purchase the estate or interest. For the purpose of this subsection, ‘loan’ includes, with the approval of the Central Bank, a loan made in a currency other than the currency of the State.  (3) The power to make a housing loan under this section includes power to make such a loan on such terms as may be approved by the Central Bank even if the amount due to the designated credit institution may exceed the value of the security at any time after the loan has been made and, if the amount due to the society in respect of capital exceeds the amount of the loan, any reference in this Act to the repayment of the loan includes reference to payment of the excess.
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(4) Subject to subsection (3), a loan made to a person under this section may be made only on terms such that the capital element of the mortgage debt does not exceed the value of the security. 5

(5) An associated designated credit institution shall not make a loan under this section on the security of any freehold or leasehold estate or interest that is subject to a prior mortgage unless the prior mortgage is in favour of the institution. 10

(6) The Central Bank may, for the purpose of this section, make regulations under subsection (5) of section 22 relating to the same matters as are referred to in that subsection. 15

(7) This section does not preclude an associated designated credit institution from accepting additional security for further securing a housing loan as the institution may determine.”. 20

9. Section 28(2)(a) Insert “other than an associated designated credit institution” after body corporate”. 25

10. Section 28(5) Insert the following definition after the definition of “approved housing body”:  
  
““associated designated credit institution” means a designated credit institution in which the society has invested in accordance with section 28(1);”. 30

## PART 2

### *AMENDMENT OF TAXES CONSOLIDATION ACT, 1997*

1. Section 198 Substitute the following subparagraph for subsection (1)(c)(iii): 35

“(iii) a person shall not be chargeable to income tax in respect of interest payable by a company if the person is not a resident of the State and is regarded as being a resident of a relevant territory for the purpose of this subsection, and the interest is interest to which section 64(2) applies or interest paid in respect of an asset covered security within the meaning of section 2 of the *Asset Covered Securities Act, 2001*.”. 40 45

PART 3

*AMENDMENT OF COMPANIES ACT, 1963*

1.       Section 61       Insert the following subsection after subsection (3):

““(4) An offer of asset covered securities within the meaning of the Asset Covered Securities Act, 2001 is not to be treated as an offer to the public for the purposes of this Act if the offer would, had it been made in the State, be exempted under or excluded from the operation of the European Community (Transferable Securities and Stock Exchange) Regulations, 1992.”.

PART 4

*AMENDMENT OF NATIONAL TREASURY MANAGEMENT AGENCY ACT, 1990*

1.       Section 3       Insert the following subsection after subsection (1):

“(1A) The Agency also has such other functions as are conferred on it by or under any other Act.”.

2.       Section 4       (a) Substitute the following subsection for subsection (1):

“(1) The principal functions of the Agency are—

(a) to perform on behalf of the Minister the functions delegated to it under section 5, and

(b) to perform such other functions as are imposed on it by or under any other Act.”.

Substitute the following subsection for subsection (3):

“(3) In carrying out the functions referred to in subsection (1)(a), the Agency is subject to the control and general supervision of the Minister.”.



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**AN BILLE UM URRÚIS FAOI CHUMHDACH SÓCMHAINNE,  
2001**

**ASSET COVERED SECURITIES BILL 2001**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

The purpose of the Bill is to create a legal framework for the issue of credit enhanced asset backed bonds by Irish mortgage and public sector lenders. It is intended to enable Irish lenders to finance their activities as efficiently as their European counterparts and to further develop the Irish capital markets and the IFSC.

*Background*

The types of securities provided for by the Bill are similar to German *Pfandbriefe*. These mortgage covered securities and public credit covered securities are secured on a pool of underlying assets (known as cover assets) held by the same financial institution. These cover assets are primarily mortgages or public sector loans respectively. Unlike the case in conventional securitisation, the assets remain the property of the institution issuing the securities and on that institution's balance sheet. Public credit covered securities are, at all times, secured by a pool of assets of at least equal nominal value and yielding at least equal interest. Mortgage covered securities are similarly secured, but based on a very conservative valuation of the assets concerned. These asset pools are dynamic: i.e. assets which disimprove in quality may be replaced by new assets. The key feature of the product is the enhanced security offered to the holders of the securities. In the event of the insolvency of the issuing institution, the assets in the pools must be used first to meet the claims of the holders of the securities. Ordinary creditors of the institution may not make a claim against these assets until the full obligation due to the investors in the securities has been discharged.

The enhanced security afforded by the legislatively guaranteed priority of claim in the event of issuer insolvency, the specification of strict matching of assets and liabilities and the regulatory environment for the product have made German *Pfandbriefe* an extremely popular investment. They are the largest single bond type in Europe. In recent years other European countries including France, Spain and Luxembourg have introduced enabling legislation to facilitate the issuance of similar securities.

As issuance of the product enhances funding efficiency, Ireland would remain at a competitive disadvantage with respect to other European centres without the passage of enabling legislation. Furthermore, with the sharp reduction in Government borrowing in recent years, the creation of new asset types, such as the securities

proposed in the Bill, will assist in the maintenance and development of domestic capital markets and the IFSC.

#### *Provisions of Bill*

The Bill is divided into ten Parts.

*Part 1* deals with preliminary matters.

*Section 1* sets out the short title of the Act and provides for a commencement date by Ministerial order.

*Section 2* sets out the purpose of the Bill i.e. to facilitate the establishment and operation in the State of designated credit institutions which will issue asset covered securities and to provide for the operation of a market in these securities.

*Section 3* deals with interpretations and definitions used generally in the Bill. The more salient of these are as follows:

“*asset covered securities*” means securities issued by a designated credit institution under the terms of this Act.

“*Authority*” means the Central Bank

“*cover assets*” includes mortgage loans, public sector loans substitution assets and any associated cover assets hedge contract which may be used as collateral for the issue of securities under the terms of the Bill.

“*cover assets hedge contract*” is a transaction in financial derivatives for the purposes of minimising interest rate risk, exchange rate risk or other risk factors which could adversely affect the business of a designated credit institution.

“*cover-assets monitor*” is a person who will independently oversee the cover assets and cover asset hedge contracts in order to ensure that the interests of security holders are protected.

“*cover assets pool*” means cover assets included in a register and which act as security for any asset covered securities issued by a designated credit institution.

“*designated credit institution*” is a credit institution approved by the Authority as satisfying the conditions necessary to issue asset covered securities.

“*prudent market value*” is defined to allow for conservative valuation of assets as stipulated by the Authority.

*Section 4* defines mortgage credit as obligations secured by mortgage, charge or other security interest on commercial or residential property within the State, other EEA countries, Switzerland, G7 countries or other OECD countries (subject to these other OECD countries not having rescheduled their external debt within the previous five years).

The Minister may, by order, specify additional assets which will qualify as mortgage credits and he or she may also specify that any such assets will no longer qualify as mortgage credits.

*Section 5* defines public credit as financial obligations of:

the State, other EEA countries, G7 countries, Switzerland or other OECD countries (subject to these other OECD countries not having rescheduled their external debt within the previous five years);

State bodies within these countries provided such bodies have the power to levy taxes or where these obligations have a very low risk weighting; and

the European Communities or the European Investment Bank.

The Minister may, by order, specify additional assets which will qualify as public credits and he or she may also specify that any such assets will no longer qualify as public credits.

*Section 6* defines substitution assets which may be included in mortgage and public credit asset pools. This is because mortgage credit assets or public credit assets required for inclusion in pools to cover outstanding securities may be temporarily unavailable. Therefore, a proportion of the cover asset pool is allowed comprise of deposits with conservative lending institutions, securities issued by conservative lending institutions or other assets approved by the Authority.

The Minister may, by order, specify additional assets which will qualify as public credits and he or she may also specify that any such assets will no longer qualify as public credits.

*Section 7* defines the circumstances in which a designated credit institution becomes insolvent while *Section 8* defines the circumstances in which a designated credit institution becomes potentially insolvent. These concepts are important as the Act sets out specific measures which must be taken in these events to ensure the continuation of payments to holders of asset covered securities.

*Part 2* deals with the functions and powers of the Authority

*Section 9* sets out the functions of the Authority as regulating designated credit institutions and performing all such other functions as are prescribed by this Act. Subsection 3 clarifies that the supervisory functions of the Authority under the Central Bank Acts, the Building Societies Act etc. apply to designated credit institutions.

*Section 10* confers on the Authority all such powers as may be necessary or expedient to enable it to perform its functions.

*Section 11* enables the Minister to confer additional functions by order on the Authority for the purposes of the better regulation of designated credit institutions.

*Part 3* deals with the designation of credit institutions.

*Section 12* makes it an offence for any person other than a designated credit institution to issue asset covered securities or to represent itself as a designated credit institution.

*Section 13* sets out the details of the process which must be followed where a credit institution applies to the Authority to be registered as a designated credit institution.

*Section 14* sets out the criteria which the Authority must follow when deciding whether or not to grant an application to be registered as a designated credit institution. Designation can be given unconditionally or subject to certain conditions (subsection 3). Subsection 5 requires the authority to grant a certificate of registration to any credit institution which it registers as a designated credit institution. The Authority is required to inform the Revenue Commissioners when it makes a designation.

*Section 15* provides that a certificate of designation entitles the designated institution to carry on the business of a designated credit institution subject to such conditions (if any) as may be attached to its certificate of designation. *Subsection 4* clarifies that the Authority is not liable for any loss suffered by a person because the institution does not comply with the Act or its conditions of designation or because the institution becomes insolvent. It also provides that a designation remains in force unless it is revoked by the Authority.

*Section 16* empowers the Authority to vary the conditions of designation which it applies to a specific designated credit institution.

*Section 17* requires the Authority to keep a register of designated credit institutions.

*Section 18* enables the Authority to revoke a designation at the request of the institution concerned but only if it is satisfied that the institution has fully discharged all obligations to the holders of asset covered securities issued by it.

*Section 19* sets out the grounds on which the Authority may revoke a designation other than at the request of the institution concerned. In these circumstances the consent of the Minister to the revocation is required (*subsection 3*). Circumstances where the Authority may exercise this power include:

- failure to carry out the business of a designated credit institution;

- non-compliance with this Act;

- inability or failure to meet its financial obligations;

- failure to adequately maintain its cover assets pool;

- change of ownership of control e.g. if the institution acquired a new parent entity which is not itself supervised by the Authority; and

- the winding up of the designated credit institution.

*Section 20* enables the Authority to give a direction to a designated credit institution preventing it from carrying out specified activities such as dealing in its assets, engaging in transactions and making payments unless it receives permission from the Authority to carry out these activities in circumstance where the Authority believes there may be grounds for revoking the institution's designation. Where a direction under this section is in effect winding up or bankruptcy proceedings may only be initiated against the institution concerned where the prior approval of the High Court has been obtained (*subsection 8*).

*Section 21* sets out the effects of revocation of designated credit institution status. After revocation the institution concerned must

continue to carry out its financial obligations to holders of asset covered securities and cover assets hedge contract counterparties until these obligations have been discharged. Where an institution does not satisfy the Authority that it is taking steps to meet these obligations, the Authority may give a direction to the institution concerned preventing it from carrying out specified activities such as dealing in its assets, engaging in transactions and making payments unless it receives permission from the Authority to carry out these activities.

*Section 22* specifies that where a designation is revoked in respect of an institution which is a company which is being wound up, the liquidator of the institution concerned has a responsibility to ensure that the institution meets its obligations toward the holders of asset covered securities issued by it and cover assets hedge counterparties.

*Section 23* enables the Authority to remove the responsibility placed on a liquidator to ensure that an institution meets its obligations toward the holders of asset covered securities issued by it and cover assets hedge counterparties. The Authority may then impose other duties on the liquidator to ensure that that the institution meet its obligations towards holders of its securities and hedge contract counterparties.

*Section 24* clarifies that where a designation is revoked by the Authority, the Authority continues to exercise any powers it has in respect of the institution concerned under the Central Bank Acts, the Building Societies Act etc. provided that the exercise of such a power is not inconsistent with this Act.

*Section 25* provides that credit institutions may appeal decisions made by the Authority under this Part to the High Court.

*Part 4* deals with the regulation of designated credit institutions. It is divided into 3 Chapters.

Chapter 1 deals with the issue of asset covered securities by designated mortgage credit institutions.

*Section 26* describes the permitted business activities of a designated mortgage credit institution. It sets out the types of assets which a designated mortgage credit institution is permitted to hold: essentially mortgage credit assets and substitution assets. The institutions are also permitted to engage in certain conservative lending activities other than mortgage business. The substitution assets which an institution may hold are derived from these other conservative lending activities. Subsection 4 permits the Minister to vary the conservative lending activities in which institutions may engage.

*Section 27* prohibits a designated mortgage credit institution from carrying out any activities other than its permitted business activities. If a credit institution is both a designated mortgage institution and a designated public credit institution it may carry out the activities permitted by both types of designation. However, it can only carry out the activities under the relevant designation in each case.

*Section 28* enables designated mortgage credit institutions to issue mortgage covered securities.

*Section 29* enables a designated mortgage credit institution to enter into contracts to hedge interest risk, exchange rate risk and other exposures. Any contract of this type must be entered into the institution's register of mortgage covered securities business.

*Section 30* sets out restrictions on the business activities of designated mortgage credit institutions. The purpose of these restrictions is to ensure that such institutions will always be able to meet their obligations to holders of asset covered securities.

*Subsection 1* prohibits a mortgage credit institution from holding mortgage credits if this would make its aggregate loan to value ratio greater than 80%.

*Subsection 2* prohibits designated mortgage credit institutions from holding mortgage credit or public credit assets in any country outside of the EEA, the G7 or Switzerland if this would cause the value of such assets to exceed 10% of the institution's balance sheet.

*Subsection 3* prohibits designated mortgage credit institutions from holding assets other than mortgage credit assets if this would cause the value of such assets to exceed 10% of the institution's balance sheet.

*Subsection 4* enables the Minister to vary, by order, the percentages referred to above while *subsection 5* enables the Authority to impose restriction on the assets other than mortgage credit assets which an institution may hold.

*Section 31* requires a designated mortgage credit institution to maintain a cover assets pool in respect of any mortgage covered securities which it issues and specifies matching requirements between securities outstanding and the pool with respect to duration, interest and currency having taking into account any hedge contracts to which the institution is a party. *Subsection 10* sets a limit of 60 per cent on the proportion of prudent market value which may be taken into the pool.

*Section 32* provides that a mortgage credit asset located in any EEA country may be included in a cover assets pool. *Subsection 2* sets an overall limit of 15% of the total pool which may be comprised of assets located in G7 countries which are not EEA members and Switzerland. Mortgage assets located in any other country in which it is permitted to hold such assets may only be included in a cover asset pool if the Minister designates the country by order and in accordance with any restrictions specified in the order.

*Section 33* provides that a designated mortgage credit institution must take immediate steps to rectify any breach of the requirements in respect of cover asset pools and may not issue mortgage covered securities until the breach is rectified.

*Section 34* contains the provisions for replacing a mortgage credit or substitution asset in a cover assets pool with another mortgage credit or substitution asset. Such replacement must be approved by the cover assets monitor (*subsection 2*). The total prudent market value of all substitution assets in a cover asset pool may not exceed 20 per cent. This percentage may be varied by order of the Minister.

*Section 35* requires a designated mortgage credit institution to keep a register of mortgage covered securities business and to enter on the register details of securities issued, the cover assets pool and cover assets hedge contracts entered into.

*Section 36* provides that the Authority and the relevant cover assets monitor have access to the covered mortgage business register.

*Section 37* sets out the details that a designated mortgage credit institution and its parent entity (if applicable) must include in its consolidated financial statement in respect of its business activities.

*Section 38* permits the Authority to set out, by regulatory notice, criteria which designated mortgage institutions must adopt in valuing mortgage credit assets or related property assets.

*Chapter 2 (sections 39 to 51)* deals with the issue of public credit securities by designated public credit institutions. The requirements imposed by the chapter are analogous to those imposed on designated mortgage credit institutions in *Chapter 1*.

*Section 43* sets out restrictions on the business activities of designated public credit institutions. The purpose of these restrictions is to ensure that such institutions will always be able to meet their obligations to holders of asset covered securities.

*Subsection 1* prohibits designated public credit institutions from holding public credit assets in a country other than an EEA country, a G7 country or Switzerland if this would cause the value of such assets to exceed 10 per cent of the institution's balance sheet.

*Subsection 2* prohibits designated public credit institutions from holding assets other than public credit assets if this would cause the value of such assets to exceed 10 per cent of the institution's balance sheet.

*Section 51 (subsection 1)* provides that the prudent market value of public credit assets in a cover asset pool is its nominal value unless the Authority makes regulations setting a different prudent market value.

*Chapter 3* deals with provisions applicable to the issue of asset covered securities generally.

*Section 52* provides that any person who provides information to an authorised recipient relating to the business of a designated credit institution is not liable to the institution provided that the information was provided in good faith to enable the recipient to perform its functions under the Act.

*Section 53* enables the transfer of assets between credit institutions (including designated credit institutions) and between credit institutions and subsidiary companies which are designated credit institutions. Where the transfer of assets is between credit institutions, the section provides that the transfers must be approved by the Minister.

Where the transfer is between credit institutions and subsidiary designated credit institutions, the transfer must be approved by the Authority. This provision enables credit institutions, who may not themselves be eligible for designated credit institution status, to form subsidiaries which may obtain the status.

*Part 5* deals with cover-assets monitors.

*Section 54* requires a designated credit institution to appoint a cover-assets monitor. The appointment of particular monitors is subject to the approval of the Authority.

*Section 55* empowers the Authority to appoint a cover-assets monitor to an institution where it believes that the institution itself is unlikely to appoint a monitor.

*Sections 56 and 57* set out the responsibilities of cover-assets monitors in respect of designated mortgage credit institutions and designated public credit institutions respectively. In particular, cover-assets monitors must ensure that the cover assets pools are sufficient to provide adequate security for any asset covered securities issued by the institution and are maintained in compliance with this Act.

*Section 58* deals with the termination of the appointment of a cover-assets monitor. A designated credit institution is obliged to terminate the appointment of a cover-assets monitor if so directed by the Authority. Where the institution itself wishes to terminate the appointment, it must gain the consent of the Authority.

*Section 59* provides that where a cover-assets monitor resigns, he or she must inform the Authority in writing and must set out the reasons for the resignation.

*Section 60* sets out the powers of a cover-assets monitor in relation to a designated credit institution. Essentially, it gives the monitor a right of access to premises of a designated credit institution and a right to inspect its records for the purpose of carrying out his or her responsibilities with respect to the institution.

*Section 61* compels a designated credit institution to supply its cover-assets monitor with such information and documents as he or she may request.

*Section 62* obliges a cover-assets monitor who is aware or has reasonable grounds for suspicion that an institution is failing to comply with this Act to report the matter to the Authority. It also obliges the cover-assets monitor to provide the Authority with such information as the Authority may request regarding the performance by the monitor of his or her functions and the extent to which the institution is complying with this Act.

*Section 63* permits the Authority to confer additional functions on the cover-assets monitor where the designated credit institution has become insolvent or is likely to become insolvent, has its approval revoked, has a manager appointed to it or is the subject of a direction under *section 20*.

*Section 64* requires a cover-assets monitor to provide reports and information to the Authority with respect to the performance of his or her functions or the compliance of a designated credit institution with this Act if the Authority so directs.

*Section 65* gives the Authority or a person authorised by the Authority a right of access to the premises of a cover-assets monitor and a right to inspect the monitor's records.

*Part 6* deals with the appointment of a manager in certain circumstances to designated and formerly designated credit institutions. The purpose of the Part is to ensure that the administration of the claims of security holders is effectively carried out.

*Section 66* defines asset covered business activities for the purposes of this Part. These are issuing asset covered securities, entering into hedge contracts, maintaining the cover asset pools and the keeping of the institution's register.

*Section 67* provides that where insolvency has occurred or is likely to occur or a credit institution's designation is revoked or the Authority is of the opinion that a manager should be appointed to safeguard the interests of the institution's creditors, the NTMA may, at the request of the Authority, find a manager to perform the institution's asset covered business activities.

*Section 68* provides that when the NTMA cannot find a manager it may arrange for the sale of the institution concerned.

*Section 69* provides that where the NTMA cannot find a buyer for the institution, the Authority may appoint the NTMA as a manager.

*Section 70* provides that designated credit institution shall pay fees to the NTMA for the performance of its functions under this Act.

*Section 71* applies *schedule 1* of this Act to managers.

*Section 72* provides that, on appointment, the manager becomes responsible for carrying out the institution's asset covered business activities.

*Section 73* provides that the manager shall, as soon as possible after appointment, take control of all assets relating to the institution's asset covered business activities and carry on that business in order to meet the institution's obligations to holders of its asset covered securities and hedge contract counterparties.

*Section 74* provides that where the post of manager becomes vacant, the Authority may request the NTMA to find an alternative manager.

*Part 7* deals with the effect of the insolvency or potential insolvency of a designated credit institution.

*Section 75* sets out interpretations used in this Part.

*Section 76* provides that the insolvency or potential insolvency of a designated credit institution does not affect the claims and rights of the holders of asset covered securities issued by the institution or those of hedge contract counterparties. The claims of cover-assets monitors and managers are also protected.

*Section 77* exempts cover asset pools and any associated cover asset hedge contracts from inclusion in the assets of a designated credit institution in the event of its insolvency. Only when the claims of the security holders have been met in a timely and complete manner will excess assets, if any, be distributed to the creditors of the designated credit institution. If an asset shortfall should exist, then the security holders shall rank as unsecured creditors of the designated credit institution in respect of residual claims. The claims of cover-asset monitors and managers supercede all other claims.

*Section 78* provides that the obligations of a designated credit institution to holders of its securities continue to have effect despite an insolvency process. The obligations of the institution to maintain a cover-assets monitor and the powers and functions of the Authority and NTMA with regard to the appointment of a manager continue to have effect until the claims of asset covered security holders have been met.

*Section 79* provides that in the event of insolvency, asset covered securities issued and hedge contracts entered into by a designated credit institution continue to have effect.

*Section 80* provides that a designated or formerly designated credit institution may not be dissolved until the claims of preferred creditors have been satisfied unless the High Court is satisfied that the institution has no assets capable of meeting the claims of these creditors.

*Section 81* provides that the preferred creditor status provided by this Part does not apply in the case of fraud or misrepresentation.

*Section 82* prohibits designated credit institutions from permitting any prior charge to exist over cover asset pools. However, charges may be created to enhance the claims of preferred creditors in other jurisdictions.

*Section 83* provides that the Authority may not give directions under the Central Bank Acts, the Building Societies Act etc. to designated credit institutions where the effect of such a direction would be to interfere with the cover asset pool, securities or hedge contracts. However, the Authority may give directions affecting these matters in order to guarantee the security and timeliness of payments to the holders of asset covered securities or cover asset hedge counterparties.

*Section 84* clarifies that where an institution is both a designated mortgage credit institution and a designated public credit institution the rights of security holders and hedge contract counterparties apply only in respect of the relevant cover assets pool.

*Part 8* provides for the making of Regulations and Ministerial Orders and Regulatory Notices.

*Section 85* provides for the making of regulations by the Authority. It also provides that regulations can create offences for non-compliance.

*Section 86* requires the Minister to consult the Authority before making an order under this Act.

*Section 87* requires every order made by the Minister and every Regulation made by the Authority under this Act to be laid before both Houses of the Oireachtas.

*Section 88* provides that a House of the Oireachtas may within 21 sitting days after the day an order or regulation was laid before it to annul the order or regulation by resolution. However, such annulment does not affect anything previously done under the order or regulation.

*Section 89* provides that a regulatory notice issued by the Authority comes into effect on the date it is published in *Iris Oifigiúil* or any a later date as specified in the notice.

*Part 9* deals with enforcement.

*Section 90* empowers the High Court to make orders enforcing compliance with this Act and prohibiting breaches of it.

*Section 91* makes provision for proceedings for an offence against this Act to be brought at any time within two years of the alleged offence.

*Section 92* makes it an offence to prevent authorised persons performing functions imposed by this Act or to provide an authorised person with false or misleading information. Authorised persons include the Authority, a cover assets monitor, the NTMA or a manager appointed to a designated credit institution.

*Section 93* provides that where an offence is committed by a body corporate, any officer of the body who was involved in the offence or, having knowledge of the offence, failed to take reasonable steps to prevent it is guilty of the offence and may be prosecuted. Such a person may be fined an amount not exceeding that for which the corporation is liable for the offence.

*Part 10* deals with miscellaneous provisions.

*Section 94* exempts the Minister, the Authority, cover asset monitors, the NTMA and managers from consequential loss.

*Section 95* provides that registration as a designated credit institution does not in itself constitute a warrant of solvency or that the institution concerned is complying with the provisions of this Act.

*Section 96* provides for reciprocal recognition between Ireland and other EEA countries, G7 countries and Switzerland of priority of claims similar to those provided for in this Act. This prepares for an integrated European market in this type of security.

*Section 97* sets out procedures for the giving of notices by the Authority to specific persons (including corporations) under this Act.

*Section 98* exempts asset covered securities from stamp duty.

*Section 99* provides for any expenses incurred by the Minister in administering the Act to be paid out of moneys provided by the Oireachtas.

*Section 100* provides that Acts specified in *Schedule 2* to this Act are amended in that schedule.

*Schedule 1* sets out provision applicable to managers under *Part 6*. It provides for the appointment of acting managers by the Authority where due to illness or absence a manager is unable to fulfill his or her functions and sets out the circumstances in which the position of manager becomes vacant. It also provides that the manager shall be paid such remuneration and expenses as determined by the Authority.

*Schedule 2* makes amendments to other Acts necessary for the establishment of a market in asset covered securities..

*Part 1* provides for specific amendments to the Building Societies Act, 1989 to enable building societies apply to issue securities under this Bill, to enhance building societies' powers to fund through the issue of securities generally and to ensure that the rights of members are not affected by these changes.

*Part 2* extends the exemption from income and corporation tax given to non-resident holders of eurobonds to the holders of cover asset securities.

*Part 3* provides that where an issue of securities is exempted under or excluded from the scope of the Prospectus Directive, the residual requirements under the Companies Acts, 1963 to 1999 do not apply.

*Part 4* provides for technical amendments to the National Treasury Management Act, 1990 to make functions conferred on the NTMA by this Act functions of the NTMA under the 1990 Act. This will enable the application of the general reporting and accountability provisions set out under the 1990 Act to the functions conferred on the NTMA by this Act.

*An Roinn Airgeadais.*  
*Iúil, 2001.*