



**AN BILLE UM GNÍOMHAIREACHT AIRGEADAIS
D'FHORBAIRT NÁISIÚNTA, 2002
NATIONAL DEVELOPMENT FINANCE AGENCY BILL, 2002**

EXPLANATORY MEMORANDUM

Introduction

The purpose of this Bill is to establish a National Development Finance Agency (NDFA) to assist in providing cost effective finance for priority infrastructure projects as an alternative to up-front Exchequer funding or unsuitable private sector funding. NDFA will discharge its functions through the National Treasury Management Agency (NTMA). Experts with experience of corporate finance, risk assessment and the delivery of major projects will be recruited by NTMA. The functions of NDFA will include:

- providing advice to State authorities, including Government Departments, to assist them in evaluating financial risks and costs and ensuring that they avail of the best financing package for each project;
- assessing optimal funding for public investment projects set out in the National Development Plan (NDP) and other infrastructure priorities; and
- raising finance for NDP projects including certain design, build, operate and finance public private partnerships (PPPs), where this would be more cost-effective than private funding and, in respect of conventionally procured capital projects, where there are clear benefits offsetting any increased cost of NDFA funding over Exchequer funding.

State authorities will be required to seek expert advice from NDFA on commercial and financial issues associated with public investment projects. It will be open to NDFA to assess and recommend Exchequer funding or private sector funding, to arrange funding itself or a package involving a combination of both NDFA funding and private sector financing. Responsibility for the decisions on all aspects of individual projects will remain with the relevant Minister/State authority. The role of the Minister for Finance in relation to the formulation and development of policy on PPPs will remain unchanged.

The Bill also provides for necessary amendments to the National Treasury Management Agency Act, 1990.

The State authorities covered by the Bill are named specifically in the *Schedule*.

Provisions

Section 1 is an interpretation section that defines certain terms used in the Bill.

Section 2 provides for the establishment of the NDFA, which is referred to in the Bill as the Agency, as a body corporate on a day to be appointed by order by the Minister for Finance.

Section 3 provides that the functions of the Agency will be to advise any State authority on the optimal means of financing major public investment projects including PPP arrangements in order to achieve value for money; to advance repayable loans, including equity, and enter into other financial arrangements regarding projects approved by any State authority; to provide advice to State authorities on all aspects of the financing, including refinancing and insurance, of major PPP projects; and form companies subject to *section 5* for the purpose of securing finance for public investment projects. It also provides that the Agency will have any other powers necessary for the performance of its functions including the power to engage consultants, advisers or other service providers. When carrying out its functions the Agency must comply with any guidelines or instructions that the Minister for Finance may issue. The Minister for Finance will consult other Ministers of the Government before issuing guidelines.

Section 4 provides that in the provision of advice the Agency must take into account any policy directions issued by the Minister for Finance to State authorities regarding financing of public investment projects and any detailed policy guidance in relation to the process, procedures and regulation generally of PPPs. This advice may include advice about consultancy services across the range of technical expertise required to undertake such projects. Policy directions and policy guidance may issue to ensure that advice given under the Act shall be independent of any potential benefits to the Agency or the NTMA.

Section 5 provides that the Agency may form special purpose companies (SPC) in order to provide finance where it is the opinion of the Agency that this is necessary or expedient to do so in order to discharge its functions under the legislation. The formation of any such companies must have the prior written consent of the Minister in respect of each individual project. SPCs set up under this section can borrow money. The section provides that no guarantee, loan or subvention will be given to any company established under this section by the Minister, the Agency, the National Treasury Management Agency, or any State authority or other State body. No liability shall attach to the State in respect of any act done by a company established under this section or in the winding up of such a company.

Section 6 provides that the Agency may borrow moneys in any currency subject to the consent of the Minister for Finance. The aggregate of the sums borrowed, guaranteed and outstanding by the Agency cannot exceed €5 billion. This section also provides that the Agency will have the power to effect contracts in order to fix, eliminate or reduce;

- first the risk of loss from changes in interest rates, currency exchange rates; or
- secondly the cost of borrowing or other transactions carried out in the course of that business.

The Agency can also open and maintain bank accounts.

Section 7 provides that the Minister for Finance may guarantee the due repayment by the Agency of the principal of any moneys and/or the payment of interest on such moneys borrowed by the Agency. The aggregate of borrowings and guarantees issued and outstanding cannot exceed €5 billion. The Minister for Finance must give the Houses of the Oireachtas an annual statement with respect to each guarantee setting out particulars, payments made by him under the guarantee and the amount (if any) repaid to him on foot of such payments, and the amount of the guarantee outstanding at the end of the year in question. Any moneys paid by the Minister for Finance under a guarantee must be repaid to the Minister by the Agency within two years from the date the moneys are advanced from the Central Fund. If all moneys are not repaid, the amount outstanding will be repaid to the Central Fund out of moneys provided by the Oireachtas. Notwithstanding such repayment, the Agency will remain liable to the Minister for the amount plus interest which must be repaid at such times and in such instalments as the Minister appoints. With regard to guarantees given by the Minister under this section in moneys in a currency other than the euro references shall be taken as referring to the equivalent in euro according to the rate of exchange for that currency and the euro at the time the calculation is made. Any payment by the Minister under this section will be a charge on the Central Fund.

Section 8 provides that State authorities, in accordance with any guidelines issued by the Minister for Finance, shall seek the advice of the Agency on the financing of public investment projects.

Section 9 provides that the Agency shall perform its functions through the National Treasury Management Agency and that the National Treasury Management Agency Act, 1990, be amended accordingly. Subject to *section 18(5)* the performance of a function by the National Treasury Management Agency under this Bill shall not be considered a function of the Agency under the National Treasury Management Agency Act, 1990.

Section 10 provides that the Board of the Agency, which will consist of a Chairperson (who will be the CEO of the National Treasury Management Agency) and four ordinary members, shall ensure that the functions of the Agency are being performed effectively, set the objectives and targets to be met by the Agency and ensure they are carried out. The ordinary members will be appointed by the Minister for Finance for a term of office of five years. The remuneration and allowances for expenses and terms relating to holding of office for members of the Board will be determined by the Minister for Finance at the time of the member's appointment. The section also provides for the disqualification from becoming or continuing as a member of the Board under certain specified circumstances and for the resignation, or the removal from membership of the Board in particular circumstances, of an ordinary member of the Board. It sets out how vacancies may be filled and allows for the reappointment of a Board member, subject to a maximum of two terms, if their membership expires by the passage of time. The Minister for Finance shall endeavour to ensure an equitable balance between men and women in the composition of the Board where this is practicable and having regard to relevant experience.

Section 11 provides for the appointment by the Board of the Chief Executive Officer of the Agency.

Section 12 provides for the holding of meetings by the Board the first of which will be on the establishment day of the Agency. It also

specifies details such as the quorum, who should chair meetings, voting rules, and the procedure and business of meetings.

Section 13 provides that the Agency shall provide itself with a seal and sets out who may authenticate the seal. Judicial notice will be taken of the seal. It also lists who may enter into and execute any contract or instrument not requiring to be under seal.

Section 14 provides that a member of the Board cannot be a member of either House of the Oireachtas, the European Parliament or a local authority, vocational educational committee, health board, or the Eastern Regional Health Authority.

Section 15 provides that a member of the Board or staff of the Agency or a consultant, advisor or other person engaged by the Agency must disclose any interest in any matter, in advance of any consideration of that matter by the Board or the Agency and cannot influence a decision or take part in consideration of that matter. Any such disclosure is to be recorded in the minutes of the meeting of the Board or otherwise recorded by the Chief Executive Officer. The section also sets out in what situations a person can and cannot be regarded as having a beneficial interest. Questions as to whether a course of conduct may breach the requirements with regard to disclosure will be determined by the Chairperson or the Chief Executive Officer and duly recorded. If a member of the Board contravenes these disclosure provisions the Minister for Finance will decide the appropriate action (including removal from office) to be taken. If a member of staff of the Agency or a consultant, advisor or other person engaged by the Agency contravenes the disclosure provisions the Chairperson will decide the appropriate action to be taken. The section also provides that the Agency shall issue and publish guidelines as to what constitutes an interest. The term “connected relative” is defined.

Section 16 provides for a prohibition on unauthorised disclosure of confidential information and a person who contravenes this shall be guilty of an offence and shall be liable to a fine or imprisonment or both.

Section 17 provides for a prohibition on communications for the purpose of improper influence with a person guilty of an offence under this section being liable to a fine or imprisonment or both.

Section 18 requires the Agency to keep accounts in such form as may be determined by the Minister for Finance and specifies certain details in relation to borrowing and fundraising by the Agency and its transfer to individual projects which must be included in the accounts. The accounts must be signed by the Chief Executive Officer and the Chairperson and adopted by the Board and submitted no later than four months after the end of the financial year to which they relate to the Comptroller and Auditor General for audit. The audited accounts must be copied to the Minister and laid before each House of the Oireachtas and must note a record of expenses incurred by the Agency. The section also provides for an amendment to the National Treasury Management Agency Act, 1990, to the effect that the audited accounts of the National Treasury Management Agency shall note a record of expenses incurred by that Agency in the exercise of its functions under this Bill. The Chief Executive Officer and the Chairperson must, when required, give evidence to the Committee of Public Accounts on specified matters. In the giving of evidence or the production or sending of documents

to a committee the Chief Executive Officer and the Chairperson cannot question or express an opinion on the merits or objectives of any policy of the Board.

Section 19 provides for the making of a report by the Agency to the Minister for Finance not later than six months after the end of each financial year in relation to its activities during that year. It is open to the Minister for Finance to make directions on the form and matters to be included in these reports.

Section 20 provides for the amendment of the *Schedule* to the Bill.

Section 21 is a standard provision to the effect that expenses incurred by the Minister in the administration of the Bill shall be paid out of monies provided by the Oireachtas.

Section 22 provides that administrative expenses of the Agency will be charged on the Central Fund; that expenses incurred in the performance of its financing functions will be recovered by repayments on loans advanced by the Agency; and that expenses incurred in relation to advisory functions will be recovered by a charge on the Vote of the appropriate Department.

Section 23 provides for the short title to the Bill.

The *Schedule* lists the State authorities covered by the Bill.

An Roinn Airgeadais.
Samhain, 2002.