



BILLE AN BHAINC CEANNAIS AGUS ÚDARÁS SEIRBHÍSÍ
AIRGEADAIS NA hÉIREANN 2003
CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY
OF IRELAND BILL 2003

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EXPLANATORY MEMORANDUM

OVERVIEW

This Bill is complementary to the *Central Bank and Financial Services Authority of Ireland Act 2003 (CBFSAI Act 2003)*. The Act established the *Irish Financial Services Regulatory Authority* to oversee the activities of financial institutions, including their treatment of customers.

This Bill provides for:

- Establishment of a Financial Services Ombudsman, to deal with consumer complaints about financial institutions
- Establishment of Consumer and Industry Consultative Panels to advise the Regulatory Authority
- New reporting and auditing obligations for financial institutions
- Power for the Regulatory Authority to impose sanctions directly on financial institutions for failure to comply with regulatory requirements, subject to a right of appeal to the Irish Financial Services Appeals Tribunal (already provided for in the CBFSAI Act)
- A right of appeal to the Appeals Tribunal in relation to certain supervisory decisions of the Authority
- New regulatory requirements for money transmission and bureau de change businesses
- Miscellaneous other amendments to financial services legislation.

The miscellaneous amendments are mainly technical in nature, correcting shortcomings in existing financial services legislation. The main substantive amendments are:

- The Consumer Credit Act 1995 is being amended by way of an enabling provision to allow the Minister to extend some or all of the provisions of that Act to lending to non-personal consumers
- The Consumer Credit Act 1995 is being amended by way of a replacement definition for ‘mortgage intermediary’ to bring ‘introducers’ — people who, although not authorised as mortgage intermediaries in their own right, introduce clients to authorised intermediaries in return for a commission — within the scope of the Act

- The Consumer Credit Act 1995 is being amended to provide that all institutions who lend on the security of a borrower's principal home are made subject to Part IX of that Act. This provides protection to a borrower by imposing various obligations on housing loan lenders (disclosure of charges, non-linkage of services, warning re loss of home, mortgage protection insurance etc)
- Section 77 of the Central Bank Act 1989 — relating to the approval of mergers and acquisitions in the banking sector above a certain threshold — is being expanded to elaborate on the criteria that the Minister would use to inform any decision made under this provision
- The right of an Administrator — appointed to an insurance company in difficulty under the terms of the Insurance Acts — to have access to the Insurance Compensation Fund is being restored.

The greater part of the Bill is based on the recommendations of the *Report of the Implementation Advisory Group on the establishment of a Single Regulatory Authority for the Financial Services Sector* (McDowell Report, May 1999). The new reporting and auditing requirements for financial institutions are based on the recommendations of the *Review Group on Auditing* (July, 2000) which relate specifically to financial institutions (the general recommendations of the Group are dealt with in the *Companies (Auditing and Accounting) Bill, 2003*). The new regulatory requirements for money transmission and bureau de change businesses implement recommendations of the *Financial Action Task Force* — an OECD-related body — on prevention of money laundering and the financing of terrorism.

The Bill has no direct Exchequer implications and does not have staffing implications for any department of state.

STRUCTURE

The main substantive provisions of the Bill are structured as new Parts of Central Bank Acts, in line with the approach taken in the *Central Bank and Financial Services Authority of Ireland Act, 2003*. The miscellaneous amendments to financial services legislation are set out in Schedules to the Bill.

Provisions

PART 1 PRELIMINARY

This Part, consisting of 1 Section, gives the short title of the Act and includes the usual provisions about commencement.

PART 2 AMENDMENT OF CENTRAL BANK ACT 1942

This Part consists mainly of a series of Sections that add new Parts to the 1942 Central Bank Act ('the Principal Act') dealing with:

- Enforcement of Financial Services legislation (Section 8,9 & 15: Part IIIC & Schedule 4A to 1942 Act; Schedules 1 & 2 to this Bill)
- Financial Services Ombudsman (Sections 10 & 17: Part VIIB & Schedules 6 & 7 to 1942 Act)
- Consultative Panels (Sections 11 & 18: Part VIIC & Schedule 8 to 1942 Act)

Section 2 provides new definitions. Sections 3 to 7, 12 to 14 and 16 contain various technical amendments to the 1942 Act.

ENFORCEMENT OF DESIGNATED ENACTMENTS AND DESIGNATED STATUTORY INSTRUMENTS

(Section 8, 9 and 15 inserting new Part IIIC and Schedule 4A into Principal Act and amending legislation as set out in Schedules 1 and 2 to this Bill)

Overview

This Part provides that, where a financial service provider breaches a requirement of an Act, Regulation or Code of Conduct, the Regulatory Authority — as an alternative to Court proceedings — will have the right to impose sanctions directly on that service provider. In order to satisfy the requirements of natural justice, provision is made for a separation of investigation and determination, with the latter being entrusted to a Panel appointed by the Authority. The Authority is obliged to confirm (or otherwise) the decisions of the Panel before they have effect.

The sanctions that may be imposed on a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €5 million
- Order to pay the costs of the investigation

The sanctions that may be imposed on a director/manager of a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €500,000
- Disqualification from being involved in the management of a financial service provider
- Order to pay the costs of the investigation

A right of appeal to the Appeals Tribunal (put in place by the CBFSAI Act as a new Part VIIA of the Central Bank Act, 1942) is provided for. In addition, amendments to existing sectoral legislation, contained in Schedules 1 and 2 to the Bill, substitute the Appeals Tribunal for the Court in relation to appeals against certain supervisory decisions of the Authority. There is a full right of appeal from the Appeals Tribunal's decisions to the High Court

Details

The Part is structured into 19 Sections with 3 Schedules.

Section 33AN: Interpretation (Part IIIC and Schedule 4A)

This provides for the necessary definitions in this Part. The definition of 'allegation' is deliberately broad. It encompasses a suspicion by an officer of the Authority or an employee of the Bank (IFSRA) that a contravention has occurred, as well as an allegation from a 3rd party. The contraventions covered by the definition include contravention of a provision of any of the enactments or statutory instruments listed in Schedule 2 to the 1942 Act (as inserted by the CBFSAI Act) as well as any condition or requirement imposed under such a provision.

Section 33AO: Establishment of Regulatory Authority Sanctions Panel

This provides for the Authority to establish a Panel of 6-9 persons, who may be drawn either from within the Authority structure or

from expert outsiders. The Panel is constituted as a committee of the Authority. One member is to be designated as convener of the Panel, another as deputy convener. For the purposes of a specific enquiry, the Panel is to consist of 3 members. More detailed provisions are contained in Schedule 4A.

Section 33AP: Certain matters to be referred to Panel

This provides for reference of an allegation to the Panel where the Authority is of the opinion that an inquiry should be held. Where a financial service provider, or a person concerned in the management of such a provider, acknowledges that an allegation is substantiated, the Regulatory Authority has the option of: (i) referring only the issue of an appropriate penalty to the Panel (ii) not referring the issue to the Panel if the service provider or individual concerned is willing to accept the direct imposition of a penalty.

Section 33AQ: Convening of board to consider matter referred by Regulatory Authority

This provides for a board, consisting of 3 members of the Panel, to be convened when an allegation is referred to the Panel. The convener is required to designate the 3 members of the board to deal with the allegation; neither of these can have been involved in the investigation of the allegation. Either the convener or deputy convener is to chair the inquiry.

Section 33AR: Chairperson to serve notice of proceedings on regulated financial service provider or person concerned

This sets out the details of the notice that the convener must serve on the financial service provider or person concerned. It must include details of the allegation and invite the financial service provider to attend a Panel inquiry on a specified date.

Section 33AS: Board to consider matter at the date, time and place notified

This provides that the Board shall hold an inquiry into an allegation and that a financial service provider who does not wish to attend has the option of making a written submission.

Section 33AT: How board is to conduct its proceedings

This provides that the enquiry is to be conducted with minimum formality but that the Authority and the financial service provider have the right to be assisted by a lawyer.

Section 33AU: Proceedings of board normally to be held in public

This provides for the inquiry to be held in public unless the Board considers that issues of confidentiality or of personal reputation justify otherwise.

Section 33AV: Power to summon witnesses and take evidence

This gives the Chair of an inquiry the power to summon a witness, to require her/him to answer questions, including on oath, and to permit a witness to provide a written statement.

Section 33AW: Decision of board on completing consideration of allegation

The sanctions that may be imposed on a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €5 million
- Order to pay the costs of the investigation

The sanctions that may be imposed on a director/manager of a financial service provider are:

- Caution or reprimand
- Order to refund a charge
- Fine of up to €500,000
- Disqualification from being involved in the management of a financial service provider
- Order to pay the costs of the investigation

The Panel is obliged to set out its findings and conclusions in writing.

Section 33AX: Powers of board on reference under section 33AP(2) or (3)

This sets out the procedure to be followed by the Board in a case where the financial service provider acknowledges that an allegation is substantiated.

Section 33AY: Regulated financial service provider to ensure that person is not concerned in management of the regulated service provider while disqualified

It is an offence, punishable by the Court, for a financial service provider to employ a person subject to a disqualification order.

Section 33AZ: Board to deliver decision to Regulatory Authority for confirmation

The Regulatory Authority can:

- Confirm a decision of the Board
- Quash the decision
- Remit the decision to the Board for further consideration

A Board decision that is confirmed by the Authority is to be regarded as a decision of the Authority.

Section 33BA: Notification and publication of decision

The Authority must publish its decision and details of any sanction imposed.

Section 33BB: Decision to be appealable

This defines a decision of the Authority as an 'appealable decision' for the purposes of Part VIIA (Appeals Tribunal) of the Act.

Section 33BC: Regulated financial service provider or person not to be liable twice for same contravention

This provides that a financial service provider or a director/manager who is penalised under this Part may not be prosecuted before the Courts, and vice-versa.

Section 33BD: Enforcement of orders imposing a monetary penalty

The Authority may take Court proceedings to recover as a debt a monetary penalty imposed under Section 33AW or 33AX.

Section 33BE: Reference to Court of question of law arising at inquiry

The Board may, on its own initiative or at the request of a financial service provider or other person concerned, refer a point of law to the Court. It may not make a decision on the relevant case until the Court has given its opinion; the Panel's decision must be consistent with the Court's opinion.

Section 33BF: Protection of members of board and participants in proceedings of board

Members of the Panel, legal practitioners and witnesses have the same protection as applies in the High Court.

Section 9 Amendment of section 57A of Central Bank Act 1942 (Interpretation Part VIIA and Schedule 5)

The amendment substitutes the original definition of ‘appealable decision’ in relation to the Appeals Tribunal. The new definition refers to a decision of the Regulatory Authority where an enactment provides that the decision is an ‘appealable decision’.

Schedules 1 & 2 to this Bill amend various pieces of financial services legislation in order to provide that certain supervisory decisions are ‘appealable decisions’. These are, in general, provisions where there is an existing right of appeal to the Court and where appeals will now go, in the first instance, to the Appeals Tribunal.

FINANCIAL SERVICES OMBUDSMAN

(Section 10, inserting new Part VIIB into Principal Act, and Section 17, inserting Schedules 6 & 7 into Principal Act)

Overview

The provisions are contained in Section 10 of the Bill, which inserts a new Part VIIB into the Central Bank Act, 1942, and Section 17, which inserts 2 new Schedules (6 and 7) into that Act.

Part VIIB provides for the establishment of an independent statutory Financial Services Ombudsman scheme to deal with consumer complaints against financial service providers. The main features of the scheme are:

- Comprehensive coverage of complaints from personal consumers against financial services providers, including banks, insurance companies, credit unions and intermediaries (brokers), with provision for extension of the scheme to complaints from non-personal consumers
- Bureau overseen by a Council, appointed by the Minister, composed of persons with appropriate consumer and industry backgrounds
- Council to appoint Financial Services Ombudsman and Deputy Ombudsmen and to make detailed regulations governing the scheme
- Ombudsman to be fully independent in making decisions on individual complaints
- Scheme funded by levies/charges on financial service providers
- Scheme independent of the Regulatory Authority, but with provision for close cooperation
- Enabling provision for existing non-statutory Insurance and Credit Institutions Ombudsmen, and their staffs, systems etc to be absorbed into the statutory Scheme, with current Insurance and Banking Ombudsmen being designated by the Minister as Deputy Ombudsmen-designate under the statutory Scheme
- Determinations of Ombudsman to be binding on financial institutions, subject to their right to appeal to the High Court
- Maximum transparency in operations, including regular published reports, accountability to Oireachtas committee etc

Details

The Part is structured into 8 Chapters, with 2 Schedules.

CHAPTER 1: Interpretation and Objects of Part

This provides for the necessary definitions in this Part and sets out the intention behind the new provisions.

CHAPTER 2: Financial Services Ombudsman Council

This provides for a Council of up to 10 persons (including the Chairperson) who are to be appointed by the Minister for Finance, following consultation with the Minister for Enterprise, Trade & Employment. The members are to be drawn from those with knowledge or experience of consumer issues relating to the provision of financial services and those with knowledge or experience of the financial services industry. The functions of the Council are specified to be:

- to prescribe guidelines under which the Financial Services Ombudsman is to operate
- to determine the levies and charges payable for the performance of services provided by the Financial Services Ombudsman
- to appoint the Financial Services Ombudsman and all Deputy Financial Services Ombudsmen
- to keep under review the efficiency and effectiveness of the Bureau and to advise the Minister, either at the Minister's request or on its own initiative, on any matter relevant to the operation of the Bureau
- to advise the Ombudsman on any matter on which the Ombudsman seeks advice
- to carry out such other activities as are prescribed by this Part.

The Council is given power to make regulations prescribing levies and fees to be paid by financial institutions. Regulations made by the Council may also prescribe detailed provisions governing the eligibility and processing of complaints and other matters (including the possible extension of the scope of the scheme to cover complaints from business customers or categories of them). The Council has no role in the determination of individual complaints by the Ombudsman. The Council Chairperson (appointed by the Minister) is obliged to provide the Minister with reports on request and to appear on request before an Oireachtas Committee. Detailed provisions on the operation of the Council are set out in Schedule 6.

CHAPTER 3: Financial Services Ombudsman's Bureau

This sets out general rules concerning the appointment, powers and immunities of the Ombudsman, Deputy Ombudsmen and staff of the Bureau. It includes provision for confirmation of the appointment of an Ombudsman-designate or Deputy Ombudsman-designate that may have been appointed before the Bill is enacted. Detailed provisions on the operation of the Bureau are set out in Schedule 7.

CHAPTER 4: Accounts and Reports

This sets out the obligation of the Ombudsman to:

- Keep proper accounts which are to be audited by the Comptroller & Auditor General
- Prepare an annual estimate of income and expenditure
- Prepare each year (and publish) a strategic plan, annual report and report summarising cases

- Appear on request before an Oireachtas Committee

CHAPTER 5: How Consumer Complaints are to be dealt with

This sets out, in general terms, how complaints are to be dealt with. Detailed requirements may be set out in Regulations made by the Council. It includes provision for:

- A ‘one-stop-shop’ for consumer complaints against financial institutions, with complaints being referred, as appropriate, to the Ombudsman or/and the Regulatory Authority (the jurisdiction of the Pensions Ombudsman is not affected)
- A consumer must first make a complaint to the financial institution concerned who must be given a reasonable opportunity to resolve the complaint before the Ombudsman considers it
- Grounds on which the Ombudsman must or may decline to deal with a complaint — for example, that it is the subject of legal proceedings, occurred too far in the past or is frivolous
- The Ombudsman is to try to resolve a dispute by mediation
- Where an agreed solution is not possible, the forms of redress that the Ombudsman may direct a financial institution to provide (e.g. to do, or cease to do, something or to provide financial compensation)
- The Ombudsman’s power to direct a financial institution to provide any information necessary for an investigation and to enter the institution’s premises for this purpose
- The Ombudsman may apply to the Court to secure enforcement of her/his decisions

Provision is also made for continuity with investigations being carried out by the existing voluntary ombudsman schemes or by the Regulatory Authority.

CHAPTER 6: References and Appeals under this Part to the High Court

This gives both a complainant and a financial institution a right of appeal to the High Court against a determination of the Ombudsman. There is also provision for the Ombudsman to refer a point of law to the High Court.

CHAPTER 7: Supplementary Provisions

This covers:

- Protection in respect of information provided to the Ombudsman
- Power of the Ombudsman to seek a High Court injunction against a financial institution in certain circumstances
- Requirement on the Ombudsman to cooperate with the Regulatory Authority and the Pensions Ombudsman *with a view to ensuring that the provisions of this Part operate in a way that contributes to promoting the best interests of consumers of financial services and to the efficient and effective handling of complaints.*

CHAPTER 8: Reciprocal Arrangements with corresponding Agencies of other EEA countries

This provides that the Ombudsman may subscribe to the EEA *Memorandum of Understanding on a Cross-Border Out-of-Court Complaints Network for Financial Services in the European Economic Area* to facilitate customers with complaints against institutions providing services on a cross-border basis. The Ombudsman can, in

accordance with the terms of the Memorandum, refer appropriate complaints to dispute settlement bodies in other EEA countries and deal with complaints referred by them to her/him.

CONSULTATIVE PANELS

(Section 11, inserting a new Part VIIC into Principal Act, and Section 18, inserting a new Schedule 8 into that Act)

Overview

The provisions are contained in Section 11 of the Bill, which inserts a new Part VIIC into the Central Bank Act, 1942, and Section 18, which inserts a new Schedule 8 into that Act.

Part VIIC provides for the appointment by the Minister of separate Consumer and Industry Consultative Panels to advise the Regulatory Authority. Specific provisions include:

- The Authority is obliged to consult both Panels before issuing general regulations, directives or codes
- The Minister is obliged to consult both Panels before approving the Authority's annual budget
- The Authority is obliged to publish Panel reports and recommendations
- Each Panel must produce an annual report
- The Chairperson of each Panel is obliged to appear, on request, before an Oireachtas Committee
- The Panels, separately or jointly, may appoint Advisory Groups to deal with specific issues.

Details

The Part is structured into 4 Chapters, with 1 Schedule.

CHAPTER 1: General

This lays down necessary definitions and provides for the Authority to establish and maintain the two Consultative Panels.

CHAPTER 2: Consultative Consumer Panel

This provides for the members of the Panel — minimum of 5, maximum of 20 — to be appointed by the Minister, following consultation with the Minister for Enterprise, Trade & Employment and organisations representing consumers. The functions of the Panel are stated to be:

- to monitor the performance by the Regulatory Authority of its functions and responsibilities under the Act
- to provide the Regulatory Authority with comments with respect to the performance of its functions and responsibilities
- to provide the Regulatory Authority with suggestions for initiatives that, in the Panel's opinion, that Authority should take with respect to the performance of its functions and responsibilities
- when the Regulatory Authority so requests, to comment on policy or regulatory documents that that Authority proposes to issue
- to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year.

The Authority is obliged to provide the Panel with such administrative services and funds as it judges to be necessary to enable the Panel

to perform its functions. It is also obliged to arrange for the attendance of appropriate officials at meetings of the Panel.

CHAPTER 3: Consultative Industry Panel

This provides for the members of the Panel — not fewer than 5, not more than 20 — to be appointed by the Minister, following consultation with the Taoiseach, the Minister for Enterprise, Trade & Employment and organisations representing financial service providers. The functions of the Panel are stated to be:

- when the Regulatory Authority so requests, to comment on policy or regulatory documents that that Authority proposes to issue
- to provide the Regulatory Authority with comments on levies and fees that that Authority proposes to prescribe under section 33J or 33K of the 1942 Act
- to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year
- to provide the Regulatory Authority with comments on the impact that the conditions and restrictions imposed by that Authority on financial service providers have on the competitiveness of those providers.

The Authority is obliged to provide the Panel with such administrative services as it judges to be necessary to enable the Panel to perform its functions. It is also obliged to arrange for the attendance of appropriate officials at meetings of the Panel.

CHAPTER 4: Provisions applying to both Consultative Panels

This provides for:

- Requirement that the Regulatory Authority consult each Panel before making or issuing a policy or regulatory document
- Requirement that the Authority, if it does not agree with the comments of a Panel, to state why it disagrees
- Requirement that the Authority publish reports and comments of Panels
- Requirement that the Minister consult each Panel before approving the Authority's annual budget
- Duty of each Panel to produce an annual report
- Duty on the Chairperson of each Panel to appear on request before an Oireachtas Committee
- Right of Panels, either separately or jointly, to appoint Advisory Groups who may be consulted directly by the Authority

Schedule 8 sets out more detailed provisions relating to the Panels, including the right of members to receive such allowances and expenses as the Authority determines and provisions for terminating a member's appointment.

PART 3 AMENDMENT OF CENTRAL BANK ACT 1997

This Part adds 2 new Parts to the 1997 Central Bank Act dealing with:

- Corporate governance oversight and auditing of financial service providers (Section 21 inserting a replacement Part IV into the Act)

- Supervision of bureau de change and money transmission business (Section 22 inserting a replacement Part V into the Act)

Section 19 provides new definitions. Sections 19 and 20 and 23 to 27 contain various technical amendments to the 1997 Act.

FUNCTIONS OF BANK WITH RESPECT TO REGULATED FINANCIAL SERVICE PROVIDERS

(Section 21 inserting replacement Part IV into the Central Bank Act, 1997)

Overview

The provisions are contained in Section 21 of the Bill, which inserts a replacement Part IV into the Central Bank Act, 1997. This Part implements the recommendations of the Review Group on Auditing (RGA) in relation to financial service providers.

The principal RGA recommendations are being implemented in the *Companies (Auditing and Accounting) Bill, 2003*.

Details

The Part is structured into 4 Chapters.

CHAPTER 1: Introductory

This provides for the necessary definitions in this Part.

CHAPTER 2: Compliance and Related Statements

This Chapter has its basis in the recommendation of the Review Group on Auditing (page 232) that the Directors of a company should be required to report on an annual basis to the shareholders on the company's compliance with its obligations under company law, taxation law and other relevant statutory or regulatory requirements. In addition, it recommended that external auditors be required to report as to whether, in their opinion, the director's report on the company's compliance with its obligations is reasonable. It recommended that such obligations should apply to financial institutions with the reports on (non) compliance being made by Directors and external auditors to the Central Bank rather than the Director of Corporate Enforcement. This Chapter gives the Regulatory Authority the power to:

- independently commission compliance reports from financial services providers (Section 25)
- issue binding guidance on how they should be prepared (Section 27A)
- require that the report be reviewed by an entity's auditor (Section 26)
- act on the basis of a request from another statutory authority, with the compliance report (and the auditor's report if appropriate) to be sent directly to that Authority and to the Regulatory Authority (Section 25(2) and 26)
- issue guidelines on corporate governance to financial services providers (Section 27A (2)).

CHAPTER 3: Obligations of auditors of regulated financial service providers

This Chapter implements the enhanced reporting requirements by Auditors and associated Accountants recommended by the Review Group on Auditing. The Group recommended that:

1. the external auditors of a financial institution should provide an annual positive statement to the Central Bank on whether

anything has come to their attention that gives rise to a legislative duty to report to the Central Bank (Recommendation 15.2)

2. there should be increased liaison between the Central Bank and the external auditors of financial institutions (already implemented by the Bank)
3. the Central Bank should have the power to obtain reports from external auditors or other reporting accountants on a variety of issues including accounting records, internal control systems or anything appropriate to its regulatory function (Rec. 15.4)
4. audit papers should be available on request to the Central Bank (Rec. 15.5)
5. the Central Bank should automatically receive management letters from external auditors of financial institutions at the same time as the 'final' management letter is being issued to the regulated entity. The auditor should inform the Central Bank if no report is being issued. (Rec. 15.6)

The recommendations are implemented in this Chapter as follows:

- Section 27B implements item 1
- Section 27C implements item 5. It is also intended to oblige the auditor to copy to the Bank the report that the auditor must make to the Directors of a company under the terms of the new Companies Bill in circumstances where the auditor is not satisfied with their Compliance Statement
- Section 27D will oblige the auditor to inform the Bank whenever s/he is obliged to report a company to the Director of Corporate Enforcement under the Companies Acts (including the reporting requirement in the new Companies Bill where directors fail to prepare a Compliance Statement)
- Section 27E implements item 3
- Section 27F implements item 4
- Section 27G provides for penalties for non-compliance
- Section 27H provides for limited immunity for an auditor or affiliate who is acting under the terms of this Part

CHAPTER 4: Supplementary Provisions

This provides for offences and prosecutions under this Part.

SUPERVISION OF REGULATED BUSINESSES

(Section 22, inserting new Part V into Central Bank Act, 1997)

Overview

The provisions are contained in Section 22 of the Bill, which inserts a new Part V into the Central Bank Act, 1997, in replacement for the existing Part V dealing with Bureaux de Change.

The new Part V extends the system of authorisation that at present applies to bureaux de change to persons engaged in money transmission business. The main purpose of the authorisation system is to facilitate the effective implementation of the anti-money laundering and anti-terrorist funding provisions of the Criminal Justice Acts. The present authorisation regime that applies to bureaux de change is also amended to encompass the objective of preventing the financing of terrorism.

Details: Part V (Supervision of Regulated Businesses)

The Part is structured into 5 Chapters.

CHAPTER 1: Introductory Provisions

This provides for relevant definitions.

CHAPTER 2: Regulation of Bureaux de Change and Money Transmission Businesses

This provides that it is an offence to carry on a bureau de change or money transmission business without an authorisation from the Regulatory Authority.

CHAPTER 3: Authorisations to carry on Regulated Businesses

This sets out:

- Requirements to be met by an applicant for authorisation
- Power of the Regulatory Authority to refuse, suspend or revoke an authorisation, subject to specified procedural steps
- Requirement that the Authority maintain a register of authorised persons
- Requirement that authorised persons maintain certain records
- Offences

CHAPTER 4: Enforcement of this Part

This provides for the appointment of Inspectors, the power of the Court to make enforcement orders and offences by persons concerned in management of bodies corporate.

CHAPTER 5: Supplementary Provisions

This specifies the provisions of this Part where there is a right of appeal to the Appeals Tribunal. It also provides for the Regulatory Authority to make regulations.

PART 4 AMENDMENT OF OTHER LEGISLATION

Overview

This Part consists of three sections (28 to 30) which refer to the following 3 Schedules:

- Schedule 3: Miscellaneous amendments to other Acts administered by the Bank
- Schedule 4: Amendment of European Communities Regulations administered by the Bank
- Schedule 5: Savings and Transitional provisions

Details

Schedule 3 deals with amendments being made to other Acts. The majority of these amendments are technical in nature. The following are examples of such amendments:

- Incorrect or incomplete references in existing legislation
- Restoring provisions deleted in error
- Correcting Minister with responsibility for legislative provisions (e.g. the Insurance (Miscellaneous Provisions) Act 1985 is being amended to reflect the Minister for Finance acquiring the shares of Sealuchais Arachais Teoranta [the holding company established to acquire the former ICI] from the Minister for Enterprise, Trade and Employment)
- Clarifying definitions considered to be ambiguous (e.g. Section 18 of the Central Bank Act 1971, as amended, clarifies

the powers of access of the Central Bank and the European Central Bank to information from license holders and others)

- Correcting typos/omissions (e.g. subsection (4) of Section 50 of the Central Bank Act 1989 should refer to Sections 233 and 268 of the Companies Act but omits “268”)

However there are a number of amendments of a more substantive nature as follows:

1. The McDowell report recommended that regulation should extend to moneylending excluded from the Consumer Credit Act due to the Act's narrow definition of 'consumer'. The Consumer Credit Act 1995 is being amended by way of an enabling provision to allow the Minister to extend some or all of the provisions of that Act to lending to non-personal consumers
2. The Director of Consumer Affairs has indicated that the practice of using mortgage 'introducers' i.e. people who, although not authorised as mortgage intermediaries in their own right, introduce clients to authorised intermediaries in return for a commission, is on the increase and that the lack of regulation gives scope for abuse. The Consumer Credit Act 1995 is being amended by way of a replacement definition for 'mortgage intermediary' to bring 'introducers' within the scope of the Act
3. The McDowell Report recommended that all mortgage lenders should be subject to regulation. The Consumer Credit Act 1995 is being amended to provide that all institutions who lend on the security of a borrower's principal home are made subject to Part IX of that Act. This provides protection to a borrower by imposing various obligations on housing loan lenders (disclosure of charges, non-linkage of services, warning re loss of home, mortgage protection insurance etc)
4. The Minister for Finance has a role, defined in Section 77 of the Central Bank Act 1989, in relation to the approval of mergers and acquisitions in the banking sector above a certain threshold. This Section is being expanded to elaborate on the criteria that the Minister would use to inform any decision made under this provision
5. The right of an Administrator — appointed to an insurance company in difficulty under the terms of the Insurance Acts — to have access to the Insurance Compensation Fund is being restored

Schedule 4 deals with amendments being made to European Communities Regulations. A small number of amendments are being made which are purely technical in nature.

Schedule 5 deals with savings and transitional arrangements.

*Department of Finance,
Nollaig, 2003.*