



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

*Mar a leasaíodh sa Roghchoiste um Airgeadas agus an tSeirbhís
Phoiblí
As amended in the Select Committee on Finance and the Public
Service*

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BILL

entitled

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AN ACT TO AMEND THE CENTRAL BANK ACT 1942 FOR THE PURPOSES OF PROVIDING FOR THE ESTABLISHMENT AND FUNCTIONS OF THE REGULATORY AUTHORITY SANCTIONS PANEL, ESTABLISHING THE FINANCIAL SERVICES OMBUDSMAN'S BUREAU AND PRESCRIBING THE FUNCTIONS AND POWERS OF THAT OMBUDSMAN, PROVIDING FOR THE ESTABLISHMENT OF CONSULTATIVE PANELS TO ADVISE THE IRISH FINANCIAL SERVICES REGULATORY AUTHORITY ON CERTAIN MATTERS; TO AMEND THE CENTRAL BANK ACT 1997 FOR THE PURPOSES OF MAKING FURTHER PROVISION FOR AUDITING THE ACCOUNTS OF FINANCIAL SERVICE PROVIDERS AND PROVIDING FOR THE REGULATION OF MONEY TRANSMISSION BUSINESSES; AND TO MAKE MISCELLANEOUS AMENDMENTS TO CERTAIN OTHER ACTS AND STATUTORY INSTRUMENTS RELATING TO THE PROVISION OF FINANCIAL SERVICES.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

1.—(1) This Act may be cited as the Central Bank and Financial Services Authority of Ireland Act 2004. Short title and commencement.

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

35 PART 2

AMENDMENT OF CENTRAL BANK ACT 1942

2.—Section 2 of the Central Bank Act 1942 (as substituted by section 3 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended— Amendment of section 2 of Central Bank Act 1942 (Interpretation).

(a) by inserting the following definition after the definition of “Appeals Tribunal” in subsection (1):

“ ‘associated entity’ in relation to a financial service provider, means—

(a) a holding company of the financial service provider, or 5

(b) a subsidiary company of the financial service provider, or

(c) a company that is a subsidiary of a body corporate, if the financial service provider is also a subsidiary of the body, but neither company is a subsidiary of the other, or 10

(d) if a financial service provider is a company, any other body corporate that is not a subsidiary of the company but in respect of which the company is beneficially entitled to more than 20 per cent of the nominal value of either— 15

(i) the allotted share capital, or

(ii) the shares carrying voting rights (other than voting rights which arise only in specified circumstances) in that other body corporate, 20

or

(e) a partnership or joint venture in which the financial service provider has a financial interest;”; 25

(b) by inserting the following definition after the definition of “Currency Act 1927” in subsection (1):

“ ‘Deputy Financial Services Ombudsman’ means the person holding office under section 57BL;”; 30

and

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

“ ‘EEA country’ means a country that is a member of the European Economic Area;”; 35

(d) by inserting the following definitions after the definition of “financial services” in subsection (1):

“ ‘Financial Services Ombudsman’ means the person holding office under section 57BJ or acting as Financial Services Ombudsman under section 57BM; 40

‘financial service provider’ means a person who carries on a business of providing one or more financial services to consumers;”;

(e) by inserting the following definition after the definition of “Governor” in subsection (1): 45

“ ‘holding company’ means a company that has one or more subsidiary companies;”;

(f) by inserting the following definition after the definition of “power” in subsection (1):

“ ‘publication’, in relation to a report or other document, includes publishing the report or document in an accessible form on an Internet website;”;

(g) by inserting the following definition after the definition of “record” in subsection (1):

“ ‘regulated financial service provider’ means—

(a) a financial service provider whose business is subject to regulation by the Bank or the Regulatory Authority under this Act or under a designated enactment or a designated statutory instrument, or

(b) a financial service provider whose business is subject to regulation by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank or the Regulatory Authority under this Act or under a designated enactment or designated statutory instrument, or

(c) in relation to Part VIIB only, any other financial service provider of a class specified in the regulations for the purposes of this paragraph;”;

(h) in the definition of “Rome Treaty” in subsection (1), by substituting “1992;” for “1992.”;

(i) by inserting the following definitions after the definition of “Rome Treaty” in subsection (1):

“ ‘subsidiary company’ has the meaning given by section 2A;

‘voting rights’ means—

(a) in relation to a company that has a share capital, the rights conferred on shareholders by virtue of their shares, or

(b) in relation to a company that does not have a share capital, the rights conferred on members,

to vote at general meetings of the company on all, or substantially all, matters.”;

(j) by inserting the following subsections after subsection (3):

“(4) For the purposes of this Act, a person is concerned in the management of a body corporate, or a firm, that is a regulated financial service provider if the person is in any way involved in directing, managing or administering the affairs of the body or firm.

(5) In this Act, a reference to the directors of a company, in relation to a company that does not have a board of directors, is a reference to the persons responsible for directing the operations of the company.”. 5

Insertion of new section 2A into Central Bank Act 1942.

3.—The Central Bank Act 1942 is amended by inserting the following section after section 2:

“Definition of ‘subsidiary company’.

2A.—(1) For the purposes of this Act, a company is a subsidiary of another company if (but only if)— 10

(a) that other company—

(i) holds a majority of the shareholders’ or members’ voting rights in the first-mentioned company, or 15

(ii) is a shareholder or member of that company and controls the composition of its board of directors, or

(iii) is a shareholder or member of that company and controls alone, in accordance with an agreement with other shareholders or members, a majority of the shareholders’ or members’ voting rights, 20 25

or

(b) that other company has the right to exercise a dominant influence over the first-mentioned company— 30

(i) because of provisions contained in its memorandum or articles, or

(ii) because of a control contract,

or

(c) that other company has a participating interest in the first-mentioned company and— 35

(i) that other company actually exercises a dominant influence over the first-mentioned company, or 40

(ii) that other company and the first-mentioned company are managed on a unified basis,

or

(d) the undertaking is a subsidiary of a company that is that other’s subsidiary company. 45

(4) For the purposes of subsection (1)(a)(i) and (iii), the total of the voting rights of the shareholders or members in the subsidiary undertaking are to be reduced by the following:

- (a) the voting rights attached to shares held by the subsidiary company in itself; and 5
- (b) the voting rights attached to shares held in the subsidiary company by any of its subsidiary companies; and 10
- (c) the voting rights attached to shares held by a person acting in his own name but on behalf of the subsidiary company or one of its subsidiary companies. 15

(5) For the purposes of subsection (1)(b), a company is not to be treated as having the right to exercise a dominant influence over another company unless it has a right to give directions with respect to the operating and financial policies of that other company and the directors of that other company are obliged to comply with those directions. 20

(6) In subsection (1)(b), ‘control contract’ means a contract in writing conferring a right that— 25

- (a) is of a kind authorised by the memorandum or articles of the company in relation to which the right is exercisable, and 30
- (b) is permitted by the law under which that company is established.

(7) Subsection (5) does not limit the construction of the expression ‘actually exercises a dominant influence’ in subsection (1)(c).” 35

Substitution of section 6B of Central Bank Act 1942.

4.—The Central Bank Act 1942 is amended by substituting the following section for section 6B (as inserted by section 7 of the Central Bank and Financial Services Authority of Ireland Act 2003):

“Offices of the Bank.

6B.—(1) For the purpose of enabling the Bank to perform its functions, the Board— 40

- (a) may acquire and hold land, and
- (b) may build, establish, equip and maintain offices and other premises,

in such places, whether in the State or elsewhere, as it considers appropriate. 45

(2) The Board may sell, lease or otherwise dispose of land held by the Bank whenever the Board considers that the land is no longer

required for the purpose of enabling the Bank to perform its functions.

(3) In this section, ‘acquire’ includes acquire by purchase, lease or exchange.”.

5 **5.**—Section 20 of the Central Bank Act 1942 is amended—

Amendment of section 20 of Central Bank Act 1942 (Prohibition of the Governor holding shares in a bank).

(a) by substituting “financial institution” for “bank” wherever it occurs,

(b) by inserting the following subsection after subsection (4):

10 “(4A) This section does not prohibit the Governor from—

(a) entering into a policy of insurance, or

15 (b) purchasing units of, or participating in, a collective investment scheme whose funds are invested in bonds or equities generally (including the bonds or shares of a financial institution), or

(c) establishing and maintaining an ordinary savings account with a building society or a friendly society.”;

20 (c) by substituting the following subsection for subsection (5):

“(5) In this section—

‘bank’ includes a bank incorporated outside the State as well as a bank incorporated in the State;

25 ‘financial institution’ includes a credit institution and an insurance undertaking;

‘shares’, in relation to a bank, include stock, shares, debentures, debenture stock, bonds and other securities of the bank.”.

30 **6.**—The Central Bank Act 1942 is amended by inserting the following section after section 33S (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003):

New section 33SA inserted into Central Bank Act 1942.

“Supplementary powers of Consumer Director with respect to carrying out the responsibilities imposed under section 33S.

33SA.—(1) To enable the Consumer Director to carry out the responsibilities imposed by section 33S, that Director may—

35 (a) undertake studies, analyses and surveys with respect to the provision of relevant financial services to consumers, and

40 (b) collect and compile information for that purpose, and

(c) publish the results of any such studies, analyses or surveys.

(2) In undertaking such a study, analysis or survey, the Consumer Director—

(a) may, by notice in writing, require any person who, in the opinion of that Director has information, or has control of a record or other thing, that is relevant to the study, analysis or survey to provide the information, record or thing to the Consumer Director, and

(b) may, by the same or another notice in writing, require the person to attend before that Director for that purpose.

(3) A person commits an offence if the person—

(a) intentionally prevents the Consumer Director from exercising a power conferred by subsection (1), or intentionally obstructs or hinders that Director in the exercise of such a power, or

(b) without reasonable excuse, fails to comply with a requirement made to the person in accordance with subsection (2), or

(c) in purporting to comply with a requirement made under subsection (2) to provide information, provides the Consumer Director with information that the person knows, or ought reasonably to know, is false or misleading in a material respect.

(4) The Consumer Director may, in writing, authorise an officer or a member of the Bank's staff to investigate the business, or any aspect of the business, of a financial services provider who has been required under this section to provide information, or a record or other thing. Such an officer or member of the Bank's staff may take whatever steps are necessary for or in connection with carrying out such an investigation.

(5) A financial services provider who—

(a) without reasonable excuse, fails to co-operate with an investigation carried out under subsection (4), or

(b) intentionally prevents such an investigation from being carried out,

or intentionally obstructs or hinders the investigation,

commits an offence.

5 (6) A person who is convicted of an offence under this section is liable—

10 (a) on conviction on indictment, to a fine not exceeding €30,000 or to imprisonment for a term not exceeding five years, or to both, or

(b) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months, or to both.

15 (7) Summary proceedings for an offence under this section may be brought and prosecuted by the Chief Executive, but not to the exclusion of any other person who is authorised to bring and prosecute summary offences.

20 (8) Despite section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceeding for an offence under this section may be brought within 2 years after the date on which the offence was first discovered.”.

25 **7.**—Section 33AC of the Central Bank Act 1942 (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended in subsection (1) by substituting “within 9 months after the end of each financial year” for “not later than the end of September in each year”.

Amendment of section 33AC of Central Bank Act 1942 (Registrar to prepare annual report).

8.—Section 33C of the Central Bank Act 1942 (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended by substituting the following subsections for subsection (9):

Amendment of section 33C of Central Bank Act 1942 (Functions and powers of Regulatory Authority).

35 “(9) If a matter relating to the financial stability of the State’s financial system arises in connection with the performance or exercise by the Regulatory Authority of its functions or powers, that Authority shall consult the Governor on the matter.

40 (9A) The Regulatory Authority may, if it considers it prudent to do so, give a written report to the Minister on any matter of the kind referred to in subsection (9), but may act on such a matter only with the agreement of the Governor.

45 (9B) For the purposes of subsections (9) and (9A), ‘matter’ includes (but is not limited to) the issue, revocation and suspension of a licence or other authority.”.

Amendment of section 33AK of Central Bank Act 1942 (Disclosure of information).

9.—Section 33AK of the Central Bank Act 1942 (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

(a) in subsection (5)(aj), by substituting “functions, or” for “functions.”, and

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(b) by inserting after subsection (5)(aj)—

“(ak) to the Financial Services Ombudsman that is required for the performance of that Ombudsman’s functions.”.

New Part IIIC inserted into Central Bank Act 1942.

10.—(1) The Central Bank Act 1942 is amended by inserting the following Part after Part IIIB (as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003):

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“PART IIIC

ENFORCEMENT OF DESIGNATED ENACTMENTS AND DESIGNATED STATUTORY INSTRUMENTS

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Interpretation (Part IIIC and Schedule 4A).

33AN.—In this Part and Schedule 4A—

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

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(a) a provision of a designated enactment or designated statutory instrument, or

(b) a code made, or a direction given, under such a provision, or

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(c) any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction;

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‘board’ means a board of members of the Panel convened to consider a matter referred under section 33AP;

‘chairperson’ means the chairperson of a board;

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

(a) attempting to contravene, and

(b) aiding and abetting and counselling and procuring a person to commit a contravention, and

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(c) inducing, or attempting to induce, a person (whether by threats or promises or otherwise) to commit a contravention, and

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(d) being (directly or indirectly) knowingly concerned in, or a party to, a contravention, and

(e) conspiring with others to commit a contravention;

‘contravention’ means a contravention of—

(a) a provision of a designated enactment or designated statutory instrument, or

(b) a code made, or a direction given, under such a provision, or

(c) any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction;

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

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

‘employ’ includes employ as an independent contractor;

‘notice’ means notice in writing;

‘Panel’ means the Regulatory Authority Sanctions Panel;

‘proceedings’, in relation to a board, means the proceedings of the board to consider a matter referred under section 33AP;

‘reference’ means a reference under section 33AP;

‘revoke’ includes cancel.

Establishment of
Regulatory
Authority Sanctions
Panel.

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

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

(3) The following are eligible for appointment under subsection (2):

- (a) members and officers of the Regulatory Authority;
- (b) employees of the Bank;
- (c) other persons who, in the opinion of that Authority, have expertise in the operation of regulated financial service providers, or any relevant class of those financial service providers.

(4) The Regulatory Authority shall appoint one of the members of the Panel to be its convenor and another to be its deputy convenor.

(5) Schedule 4A has effect in relation to the members of the Panel.

Certain matters to be referred to Panel.

33AP.—(1) If the Regulatory Authority is of the opinion that proceedings should be held to consider whether or not an allegation made against a regulated financial service provider is substantiated, it may refer the matter to the convenor with a view to constituting a board to consider the matter. The reference must specify the grounds on which the allegation is based and be accompanied by any documents or materials that may assist in deciding whether or not the allegation is substantiated. A reference may relate to more than one allegation.

(2) If a regulated financial service provider acknowledges that an allegation made against the financial service provider is substantiated, the Regulatory Authority may—

(a) refer the matter to the convenor with a view to constituting a board to decide the sanction (if any) to be imposed on the financial service provider under section 33AW for the contravention to which the allegation relates, or

(b) with the financial service provider's consent, impose on the financial service provider any sanction that a board is empowered to impose on regulated financial service providers under that section.

(3) If the Regulatory Authority acts under subsection (2)(a) or (b) in relation to an allegation made against a regulated financial service provider and a person concerned in the management of the financial service provider acknowledges that the person's conduct contributed to a contravention to which the allegation relates, the Regulatory Authority may—

(a) refer the matter to the convenor with a view to constituting a board to decide the sanction (if any) to be imposed on the person under section 33AW, or

(b) with the person's consent, impose on the person any sanction that a board is empowered to impose under that section on a person concerned in the management of a financial service provider in relation to whom an allegation is found to be substantiated.

Convening of board to consider matter referred by Regulatory Authority.

33AQ.—(1) On receiving a reference under section 33AP, the convenor shall convene a board consisting of 3 members of the Panel (including the convenor or deputy convenor) to consider the matter to which the reference relates. However, the convenor may not include as a member of the board any member of the Panel who has been directly involved in the investigation of the matter.

(2) If the board convened to consider the matter includes the convenor, the convenor is to be chairperson of the proceedings. However, if the board so convened does not include the convenor, the deputy convenor is to be the chairperson of the inquiry. This subsection is subject to subsection (3).

(3) If both the convenor and deputy convenor have been directly involved in the investigation of the matter, the Chief Executive shall—

(a) appoint a board consisting of 3 members of the Panel to consider the matter to which the reference relates, and

(b) appoint as chairperson of the board a member of the board who has not been directly involved in investigating the matter.

Chairperson to serve notice of proceedings on regulated financial service provider or person concerned.

33AR.—(1) As soon as practicable after convening a board to consider a reference made under section 33AP, the chairperson of the board shall serve on the regulated financial service provider concerned a notice giving details of the matter to which the reference relates.

(2) A notice under subsection (1) must—

(a) specify a date, time and place at which the board will consider the matter, and

(b) invite the financial service provider concerned to attend the proceedings of the board on the date, and at the time and place, so specified. 5

(3) If a board is convened—

(a) to consider an allegation against a regulated financial service provider and it is alleged that a person concerned in the management of the financial service provider engaged in conduct that contributed to the contravention to which the allegation relates, or 10

(b) to decide what sanction (if any) should be imposed on such a person in accordance with section 33AX(2), 15

the chairperson of the board shall serve on the person a notice giving details of the alleged conduct. 20

(4) A notice under subsection (3) must—

(a) specify a date, time and place at which the board will consider the matter, and 25

(b) invite the person concerned to attend the proceedings of the board on the date, and at the time and place, so specified.

Board to consider matter at the date, time and place notified.

33AS.—(1) A board convened to consider a matter referred under section 33AP shall hold proceedings to consider the matter on the date, and at the time and place, specified in the notice served in accordance with section 33AR, or on such later date, and at such time and place, as is subsequently notified to the regulated financial service provider or other person concerned to whom the matter relates. 30 35

(2) A regulated financial service provider or, where applicable, a person concerned in the management of the financial service provider who does not wish to attend proceedings of the board to consider the matter may, before the date of the proceedings, lodge with the chairperson of the board any written submissions that the financial service provider or person wishes the board to take into account when considering the matter. 40 45

(3) The board may adjourn its proceedings from time to time and from place to place, but, if it does so, it shall ensure that the regulated financial service provider or person concerned 50

is notified of the date, time and place at which the adjourned proceedings are to be resumed.

(4) The board may proceed with its consideration of a matter in the absence of the regulated financial service provider or person concerned if that financial service provider or person fails to attend the proceedings on the date, and at a time and place, notified in accordance with this section.

How board is to conduct its proceedings.

33AT.—(1) A board convened to consider a matter referred under section 33AP shall conduct its proceedings with as little formality, and with as much expedition, as a proper consideration of the matter will allow, and—

(a) is not bound by the rules of evidence, and

(b) may, on such conditions as it thinks fit, permit a person to intervene, and

(c) shall observe the rules of natural justice.

(2) A board may, if it so chooses, be assisted by a legal practitioner.

(3) In proceedings of a board convened to consider a matter relating to a regulated financial service provider, the financial service provider is entitled to be assisted or represented by a legal practitioner or by any other person.

(4) In proceedings of a board convened to consider a matter relating to a person concerned in the management of a regulated financial service provider, the person is entitled to be assisted or represented by a legal practitioner or by any other person.

Proceedings of board normally to be held in public.

33AU.—(1) Except as provided by this section, a board convened to consider a matter referred under section 33AP shall hold its proceedings in public.

(2) A board may decide to hold its proceedings in private if satisfied that a person's reputation would be unfairly prejudiced if the proceedings were to be held in public.

(3) A board may decide to hold in private a part of proceedings relating to a matter if satisfied that—

(a) evidence is likely to be given, or a matter is likely to arise, during the proceedings that is of a confidential nature, or

(b) evidence is likely to be given, or a matter is likely to arise, during the proceedings that could also be given in evidence, or could also arise, in proceedings for an offence against a law of the State, or 5

(c) the public disclosure of particular information during the proceedings would contravene a law of the State. 10

(4) A board may make a decision under subsection (2) or (3) either on its own initiative or at the request of the regulated financial service provider or other person concerned.

Power to summon witnesses and take evidence.

33AV.—(1) If a board is convened to consider an allegation referred under section 33AP(1), the chairperson may, in writing— 15

(a) summon a person to attend the proceedings to give evidence as a witness or to produce specified documents or things, or to do both, and 20

(b) require the person to attend the proceedings from day to day until the chairperson excuses or releases the person from further attendance. 25

(2) The board may take evidence on oath at the proceedings and, for that purpose, the chairperson may—

(a) require a witness to take an oath, and

(b) administer an oath to the witness. 30

(3) The oath to be taken by a witness for the purposes of this section is an oath that the evidence the witness will give will be true.

(4) If a person attends the proceedings in accordance with a summons to attend as a witness, the chairperson may require the person to answer questions put by the board or, with the permission of the chairperson, put by any party to the proceedings. 35

(5) If a person attends the proceedings in accordance with a summons to produce a specified document or thing, the chairperson may require the person to produce the document or thing. 40

(6) The chairperson may allow a witness to give evidence by tendering a written statement, which, if the chairperson so requires, must be verified either by oath or by statutory declaration. 45

5 (7) A person who, without reasonable excuse, fails to comply with a summons notified, or a requirement made, under this section commits an offence and is liable on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both.

10 Decision of board on completing consideration of allegation.

33AW.—(1) On completing its consideration of an allegation made against a regulated financial service provider, a board shall decide whether or not the allegation is substantiated.

15 (2) If the board finds that an allegation is substantiated, it may impose on the financial service provider concerned one or more of the following sanctions:

- 20 (a) a caution or reprimand;
- (b) an order to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service by the financial service provider;
- 25 (c) an order to pay to the Regulatory Authority a monetary penalty not exceeding the prescribed amount;
- 30 (d) if the financial service provider is a natural person, an order disqualifying the person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;
- 35 (e) an order to pay to the Regulatory Authority all or a specified part of the costs incurred by that Authority in investigating the allegation.

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

- 45 (a) if the financial service provider is a body corporate or an unincorporated body, €5,000,000, or
- (b) if the financial service provider is a natural person, €500,000, or
- (c) if the regulations prescribe some other amount for paragraph (a) or (b), that other amount.

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

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

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

- (a) €500,000, or
- (b) if the regulations prescribe some other amount of money for paragraph (a), that other amount.

(6) If the board decides to impose a monetary penalty on a regulated financial service provider under subsection (2), it may not impose an amount that would be likely to cause the financial service provider to cease business.

(7) If the board decides to impose a monetary penalty on a person under subsection (4), it may not impose an amount that would be likely to cause the person to be adjudicated bankrupt.

(8) At the conclusion of its consideration of an allegation made against a regulated financial service provider, the board shall set out in writing—

- (a) its finding in respect of the allegation, and
- (b) the grounds on which its finding is based, and
- (c) if the board has found the allegation to be substantiated, the sanctions (if any) imposed under this section

in respect of the contravention to which the allegation relates.

5 (9) On finding that the conduct of a person concerned in the management of a regulated financial service provider contributed to a contravention committed by the financial service provider, the board shall set out in writing—

(a) the finding, and

10 (b) the grounds on which the finding is based, and

(c) the sanctions (if any) imposed on the person under this section.

15 Powers of board on reference under section 33AP(2) or (3).

33AX.—(1) If a board is convened in accordance with section 33AP(2) to consider what sanction (if any) should be imposed on a regulated financial service provider in respect of a contravention that the financial service provider acknowledges to have committed, the board may impose on the financial service provider any sanction that could be imposed under section 33AW(2).

20 (2) If a board is convened in accordance with section 33AP(3) to consider what sanction (if any) should be imposed on a person concerned in the management of a regulated financial service provider in respect of conduct that the person acknowledges contributed to a contravention committed by the financial service provider, the board may impose on the person any sanction that could be imposed under section 33AW(4).

25 (3) A board may not impose a sanction under this section without giving the financial service provider or person concerned an opportunity to make representations (either written or oral) with respect to the imposition of the sanction.

35 Regulated financial service provider to ensure that person is not concerned in management of the regulated service provider while disqualified.

33AY.—(1) A regulated financial service provider shall ensure that a person is not permitted to be concerned in the management of the financial service provider while the person is subject to a disqualification order imposed under section 33AW(2) or (4).

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

(a) on summary conviction, to a fine not exceeding €2,000, or

45 (b) on conviction on indictment, to a fine not exceeding €75,000.

Board to deliver decision to Regulatory Authority for confirmation.

33AZ.—(1) As soon as practicable after completing its consideration of a matter referred under section 33AP, a board shall deliver its decision to the Regulatory Authority for confirmation. 5

(2) On receiving a decision of the board, the Regulatory Authority shall confirm the decision, unless it is satisfied on reasonable grounds that there are substantial grounds for not doing so, in which case that Authority shall either— 10

- (a) quash the decision, or
- (b) remit the decision to the board for further consideration.

(3) In performing the function imposed by subsection (2), the Regulatory Authority is obliged only to consider the contents of the decision itself. 15

(4) A decision of a board that is confirmed by the Regulatory Authority is for all purposes to be regarded as the decision of that Authority. 20

- (5) If the Regulatory Authority—
- (a) quashes a decision of a board, or
 - (b) remits such a decision to the board for further consideration, 25

it shall specify in writing its reasons for so doing.

Notification and publication of decision.

33BA.—As soon as practicable after confirming a decision of a board in accordance with section 33AZ, the Regulatory Authority shall— 30

- (a) notify the decision to the regulated financial service provider or other person concerned, and 35
- (b) publish details of the decision in such publication, and in such form and manner, as it considers appropriate.

Decision to be appealable.

33BB.—A decision confirmed by the Regulatory Authority in accordance with section 33AZ is an appealable decision for the purposes of Part VIIA. 40

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

33BC.—(1) If a board has been convened to consider an allegation made against a regulated financial service provider, the financial service provider is not liable to be prosecuted for, or to be found guilty of, any offence arising from the same facts as those on which the allegation is or was based. 45
50

5 (2) If a board that has been convened to consider an allegation made against a regulated financial service provider is also considering or has considered whether the conduct of a person concerned in the management of the financial service provider contributed to a contravention to which the allegation relates, the person is not liable to be prosecuted for, or found guilty of, any offence directly arising from the conduct.

10 (3) If a board convened to consider an allegation made against a regulated financial service provider finds the allegation to be substantiated, it may not impose a monetary penalty on the financial service provider in respect of the contravention to which the allegation relates if—

15 (a) the financial service provider has, before or after the commencement of this section, been charged with an offence based on the same facts as those to which the allegation relates, and

20 (b) the charge is pending, or the financial service provider has either been found guilty or not guilty of having committed the offence.

25 (4) If a board that has been convened to consider an allegation made against a regulated financial service provider finds the allegation to be substantiated and also finds that the conduct of a person concerned in the management of the financial service provider contributed to a contravention to which the allegation relates, it may not impose a monetary penalty on the person if—

30 (a) the person has, before or after the commencement of this section, been charged with an offence based on the same facts as those that constituted the conduct, and

35 (b) the charge is pending, or the person has either been found guilty or not guilty of having committed the offence.

40 Enforcement of orders imposing a monetary penalty.

45 33BD.—The Regulatory Authority may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Bank the amount of a monetary penalty imposed under section 33AW or 33AX on a regulated financial service provider or other person.

Reference to Court of question of law arising at inquiry.

33BE.—(1) A board may, on its own initiative or at the request of the regulated financial service provider or other person concerned, refer to the Court for decision a question of law arising in proceedings of the board. 5

(2) If a question arising in proceedings before a board is referred to the Court in accordance with subsection (1), the board shall not— 10

(a) while the reference is pending, make a decision to which the question is relevant, or

(b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question. 15

(3) Whenever a board decides to refer a question in accordance with subsection (1), it shall send to the Court all documents that were before the board in connection with the proceedings. At the conclusion of the proceedings in the Court in relation to the reference, the Court shall arrange for the documents to be returned to the board. 20 25

Protection of members of board and participants in proceedings of board.

33BF.—(1) Members of a board have, in performing or exercising any of their functions and powers in connection with a consideration of matters referred under section 33AP, the same protection and immunity as a judge of the High Court. 30

(2) A legal practitioner or other person who appears in proceedings of a board on behalf of a regulated financial service provider or person concerned in the management of a regulated financial service provider has the same protection and immunity as a barrister has when representing a party in a proceeding in the High Court. 35

(3) Subject to this Part, a person who is required by a summons to attend proceedings of a board as a witness or to produce documents in the proceedings has the same protection as a witness in proceedings in the High Court.”. 40 45

(2) The Acts specified in *Schedule 1* are consequentially amended as indicated in that Schedule.

(3) The statutory instruments specified in *Schedule 2* are consequentially amended as indicated in that Schedule.

11. Section 57A of the Central Bank Act 1942 (as inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

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

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

“ ‘appealable decision’ means a decision of the Regulatory Authority that is declared by a provision of this Act, or of a designated enactment or designated statutory instrument, to be an appealable decision for the purposes of this Part;”;

(b) by deleting subsections (2) and (3);

(c) by renumbering subsection (4) as subsection (2).

12.—The Central Bank Act 1942 is amended by inserting the following Part after Part VIIA (as inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003):

New Part VIIB inserted into Central Bank Act 1942.

“PART VIIB

FINANCIAL SERVICES OMBUDSMAN

CHAPTER 1

Interpretation and objects of Part

20 Definitions.

57BA.—In this Part—

‘Bureau’ means the Financial Services Ombudsman’s Bureau;

‘Bureau staff member’ means a person appointed under section 57BN;

25 ‘complaint’ means a complaint made by a consumer under this Part about the conduct of a regulated financial service provider;

‘conduct’ includes alleged conduct;

‘consumer’ means—

30 (a) a natural person when not acting in the course of, or in connection with, carrying on a business, or

35 (b) a person, or group of persons, of a class prescribed by Council regulations;

‘Council’ means the Financial Services Ombudsman Council established by section 57BC;

40 ‘Council regulations’ means regulations made by the Council under section 57BF and in force;

‘eligible consumer’, in relation to a regulated financial service provider, means a consumer—

- (a) who is a customer of the financial service provider, or 5
- (b) to whom the financial service provider has offered to provide a financial service, or
- (c) who has sought the provision of a financial service from the financial service provider; 10

‘investigation’ means an investigation of a complaint;

‘parties’ in relation to a complaint, means the complainant, the regulated financial service provider against whom the complaint is made, and any other person who, in the opinion of the Financial Services Ombudsman, should be treated as a party to the complaint; 15

‘Pensions Ombudsman’ means the person holding or acting in the office of Pensions Ombudsman under section 128 of the Pensions Act 1990. 20

Objects of this Part. 57BB.—The objects of this Part are as follows: 25

- (a) to establish the Financial Services Ombudsman as an independent officer—
 - (i) to investigate, mediate and adjudicate complaints made in accordance with this Part about the conduct of regulated financial service providers involving the provision of a financial service, an offer to provide such a service or a failure or refusal to provide such a service, and 30 35
 - (ii) to exercise such other jurisdiction as is conferred on the Financial Services Ombudsman by this Part; 40
- (b) to ensure that the Financial Services Ombudsman and the staff of the Financial Services Ombudsman’s Bureau are accessible and that complaints about the conduct of regulated financial service providers are dealt with efficiently and effectively and are adjudicated fairly; 45 50

- (c) to enable such complaints to be dealt with in an informal and expeditious manner.

CHAPTER 2

5 *Financial Services Ombudsman Council*

Establishment of
Financial Services
Ombudsman
Council.

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

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

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

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

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

30 (6) Such a member is eligible for reappointment.

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

Functions and
powers of Financial
Services
Ombudsman
Council.

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

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

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

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

(d) to keep under review the efficiency and effectiveness of the Bureau and to advise the Minister, either at the Minister's request or on its own initiative, on any matter relevant to the operation of the Bureau, and 5

(e) to advise the Ombudsman on any matter on which the Ombudsman seeks advice, and 10

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

(2) The Council has no role with respect to how the Financial Services Ombudsman deals with a particular complaint. 15

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

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

57BE.—(1) The purpose of this section is to enable the Financial Services Ombudsman to have sufficient funds to enable that Ombudsman to perform the functions imposed, and to exercise the powers conferred, on that Ombudsman by this or any other Act. 20

(2) Council Regulations may prescribe levies or fees to be paid by specified classes of financial service providers. 25

(3) Without limiting subsection (2), Council Regulations may provide for any of the following matters: 30

(a) the persons, or classes of persons, who are required to pay specified kinds of levies or fees;

(b) the amounts of those levies or fees;

(c) the periods in respect of which, or the dates by which, specified levies or fees are to be paid to the Financial Services Ombudsman; 35

(d) penalties that are payable by a person who fails to pay a levy on time or pay a required fee; 40

(e) the keeping of records, and the making of returns to the Financial Services Ombudsman, by persons who are liable to pay a specified levy or a specified fee; 45

(f) the collection and recovery of levies and fees.

5 (4) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount of levy or fee payable under Council Regulations made for the purpose of this section.

Council to make regulations for the purposes of this Part.

57BF.—(1) The Council shall make regulations for or with respect to matters—

(a) that are, by this Part, required or permitted to be prescribed, or

10 (b) that are necessary or convenient to be prescribed for the purpose of enabling the Financial Services Ombudsman to perform the functions imposed, and to exercise the powers conferred, on that Ombudsman by this Part.

15 (2) In particular, a regulation under subsection (1) may do any of the following:

20 (a) prescribe matters that the Financial Services Ombudsman must take into account when investigating or adjudicating a complaint;

(b) prescribe procedures to be followed in processing a complaint;

25 (c) specify circumstances in which the Financial Services Ombudsman can dismiss a complaint without considering its merits;

30 (d) specify the place or places at which the Financial Services Ombudsman is required to make available copies of any report that that Ombudsman is, by a provision of this Part, required to prepare or publish.

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

40 (4) As soon as practicable after the Minister has consented to regulations in accordance with subsection (3), the Council shall arrange to lay them before each House of the Oireachtas.

45 (5) A House of the Oireachtas may pass a resolution annulling regulations laid before the House in accordance with subsection (4), but only within 21 sitting days after they are laid.

Council chairperson to provide Minister with reports. 57BG.—The chairperson of the Council is required to provide the Minister with such reports relating to the activities of the Bureau as the Minister requires from time to time. However, such a report must not include particulars or comments on any complaint that is being or has been investigated by the Financial Services Ombudsman. 5

Council chairperson to appear before Oireachtas committee when required. 57BH.—(1) The chairperson of the Council is required to attend a meeting of a joint committee of the Houses of the Oireachtas whenever asked to do so by the committee and to provide such information (including documents) as the committee specifies and as is in the possession of, or is available to, that chairperson. 10 15

(2) Such a committee is not entitled to request the chairperson of the Council to provide information relating to any complaint that is then being investigated, mediated or adjudicated by the Financial Services Ombudsman. The chairperson must refuse to comply with a request from the committee to provide it with any such information. 20

CHAPTER 3 25

Financial Services Ombudsman's Bureau

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

(2) The Bureau consists of the Financial Services Ombudsman, each Deputy Financial Services Ombudsman and the staff members holding office under section 57BN. 30

Financial Services Ombudsman. 57BJ.—(1) The Council shall, whenever the occasion requires, appoint a suitably qualified person to be the Financial Services Ombudsman. However, if a person has been appointed as Financial Services Ombudsman or as Financial Services Ombudsman designate before the commencement of this section, that person is taken to have been appointed by the Council under this subsection. 35 40

(2) Subject to Schedule 7, a person appointed as the Financial Services Ombudsman holds office for such period, not exceeding 6 years, as is specified in the document of appointment. 45

(3) Such a person is eligible for reappointment at the end of a period of office. 50

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

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

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

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

15 Functions and powers of Financial Services Ombudsman.

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

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

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

(4) The Financial Services Ombudsman is entitled to perform the functions imposed, and exercise the powers conferred, by this Act free from interference by any other person and, when dealing with a particular complaint, is required to act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without regard to technicality or legal form.

45 Deputy Financial Services Ombudsman.

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

(2) Subject to Schedule 7, a person appointed as a Deputy Financial Services

Ombudsman holds office for such period, not exceeding 6 years, as is specified in the document of appointment.

(3) Such a person is eligible for reappointment at the end of a period of office. 5

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

(a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member, or 10

(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or 15

(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member. 20

(5) Within the scope of the authority conferred by the Financial Services Ombudsman, a Deputy Financial Services Ombudsman may perform any of the functions, or exercise any of the powers, of the Financial Services Ombudsman imposed or conferred on the Financial Services Ombudsman by this or any other Act. 25 30

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

(7) A Deputy Financial Services Ombudsman is entitled to perform the functions and exercise the powers under subsection (5) free from interference by any other person, except that that Ombudsman shall— 35

(a) comply with directions given by the Financial Services Ombudsman, and 40

(b) keep the Financial Services Ombudsman informed about the progress made with respect to dealing with complaints that are assigned to the Deputy Financial Services Ombudsman. 45

Acting Financial Services Ombudsman.

57BM.—(1) The Council shall appoint the Deputy Financial Services Ombudsman, or, if there are two or more such Ombudsmen, one of those Ombudsmen, to act as Financial 50

Services Ombudsman during the absence of the Financial Services Ombudsman or during a vacancy in the office of that Ombudsman.

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

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

Bureau staff.

15 57BN.—(1) Subject to this section, the Financial Services Ombudsman is responsible for appointing and employing persons necessary for the proper functioning of the Bureau.

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

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

25 (a) the Government's policy with respect to the remuneration of public sector employees, and

30 (b) any directions that the Minister may give from time to time for the purpose of giving effect to that policy.

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

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

45 (6) A Bureau staff member is entitled to perform the functions and exercise the powers authorised under subsection (4) free from interference from any other person, except that the staff member shall—

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

(b) keep the Financial Services Ombudsman, or the appropriate Deputy Financial Services Ombudsman, informed about the progress made with respect to dealing with complaints that are assigned to the staff member. 5

(7) Schedule 7 has effect with respect to the Financial Services Ombudsman, the Deputy Financial Services Ombudsman and the members of the Bureau staff appointed under this section. 10

Immunity of Financial Services Ombudsman and others.

57BO.—(1) A Bureau staff member is not liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings in respect of any act done, or omitted to be done, in the course of performing a function imposed, or exercising a power conferred, on the member by or under this or any other Act unless it is proved that the act was done, or omitted to be done, in bad faith. 15 20

(2) Civil or criminal proceedings in respect of any act or omission referred to in subsection (1) may be brought against a Bureau staff member only with the leave of the High Court. 25

(3) The High Court may grant leave under subsection (2) only if satisfied that there is substantial evidence that the person to be proceeded against has acted, or omitted to act, in bad faith. 30

(4) For the purposes of this section, 'bureau staff member' includes the Financial Services Ombudsman and each of the Deputy Financial Services Ombudsmen. 35

CHAPTER 4

Accounts and reports

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

57BP.—(1) The Financial Services Ombudsman shall ensure that accounting records are kept that properly record and explain the financial transactions of or relating to the Bureau. 40

(2) The Financial Services Ombudsman shall ensure that the accounting records relating to the Bureau comply with the accounting standards (if any) notified in writing to the Financial Services Ombudsman by the Council, acting on the advice of the Minister. 45

(3) The Financial Services Ombudsman shall ensure that the accounting records relating to the Bureau are kept for 6 years after 50

the transactions to which they relate are completed. The Financial Services Ombudsman may, at the end of that period, direct that those records be retained or arrange for them to be disposed of in such manner as that Ombudsman considers appropriate. This subsection has effect despite any other enactment to the contrary.

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

Financial Services Ombudsman to arrange for preparation of annual statement of accounts.

57BQ.—(1) Within 4 months after the end of each financial year, the Financial Services Ombudsman shall arrange for the preparation and transmission to the Comptroller and Auditor General of a statement of accounts for the year. The statement must be in a form approved by the Council acting in consultation with the Minister. A form of statement approved under this subsection remains in force until superseded by another form of statement so approved.

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

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

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

(a) prepare an annual report specifying the activities of the Bureau during that year, and

(b) submit the report to the Council.

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

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

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

(5) On becoming aware that subsection (4) has been complied with, the Financial Services

Ombudsman shall arrange for the publication of the annual report.

Financial Services Ombudsman to publish certain other reports.

57BS.—(1) Within 3 months after the end of each financial year, the Financial Services Ombudsman shall publish a report containing a summary of all complaints made under Chapter 5 during the preceding financial year and of the results of the investigations into those complaints. 5

(2) The Financial Services Ombudsman may publish such a report more frequently than once a year if that Ombudsman thinks it would be in the public interest to do so. 10

(3) The Financial Services Ombudsman may, with the approval of the Council, publish reports on other matters relating to the operation of the Bureau. 15

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

57BT.—(1) Not later than 3 months before the beginning of each financial year, or within such extended period as the Council may allow, the Financial Services Ombudsman shall arrange for— 20

(a) the preparation of a statement setting out estimates of the income and expenditure relating to the Bureau for that year, and 25

(b) submit the statement to the Council for approval.

(2) The statement must—

(a) specify the amounts expected to be collected and recovered during the financial year concerned from the imposition of levies and fees under section 57BE, and 30

(b) specify any other sources from which funds are expected to be obtained during that year to finance the Bureau's activities and the amounts expected to be raised from those sources, and 35 40

(c) specify the activities that the Bureau proposes to undertake during that year.

(3) Before submitting the statement to the Council for approval, the Financial Services Ombudsman shall provide it with particulars of the estimates referred to in subsection (1)(a). As soon as practicable after being provided with those particulars, the Council shall give the Financial Services Ombudsman its views on those estimates. 45 50

Financial Services
Ombudsman to
prepare strategic
plan.

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

5 (a) prepare for the year a strategic plan
that complies with this section, and

(b) submit the plan to the Council for its
approval.

(2) A strategic plan must specify—

10 (a) the objectives of the activities of the
Bureau for the financial year con-
cerned, and

(b) the nature and scope of the activities
to be undertaken, and

15 (c) the strategies and policies for achiev-
ing those objectives, and

(d) targets and criteria for assessing the
performance of the Bureau, and

(e) the uses for which it is proposed to
apply the Bureau's resources.

20 (3) If the Council has in writing notified the
Financial Services Ombudsman of any
requirements with respect to the form in
which the strategic plan is to be prepared, the
plan must comply with those requirements.

25 (4) As soon as practicable after approving
a strategic plan, the Council shall deliver the
plan to the Minister.

30 (5) As soon as practicable after receiving
the Financial Services Ombudsman's strategic
plan, the Minister shall arrange for a copy of
the plan to be laid before both Houses of the
Oireachtas.

35 (6) On becoming aware that subsection (5)
has been complied with, the Financial Services
Ombudsman shall—

(a) arrange for the publication of the
strategic plan, and

(b) take all reasonably practical steps to
implement it.

40 Financial Services
Ombudsman to
provide Council and
Minister with
reports.

45 57BV.—(1) The Financial Services
Ombudsman is required to provide the
Council or the Minister with such reports
relating to the activities of the Bureau as the
Council or the Minister requires from time
to time. However, such a report must not
include particulars or comments on any com-
plaint that is then being considered by the
Financial Services Ombudsman.

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

Financial Services Ombudsman to appear before Oireachtas committee when required.

57BW.—(1) The Financial Services Ombudsman is required to attend a meeting of a joint committee of the Houses of the Oireachtas whenever asked to do so by the committee and to provide such information (including documents) as the committee specifies and as is in the possession of, or is available to, that Ombudsman. 5 10

(2) Such a committee is not entitled to request the Financial Services Ombudsman to provide information relating to any complaint that is currently under investigation. The Financial Services Ombudsman must refuse to comply with a request from the committee to provide it with any such information. 15

CHAPTER 5

How consumer complaints are to be dealt with 20

Complaints about conduct of regulated financial service providers.

57BX.—(1) An eligible consumer may complain to the Financial Services Ombudsman about the conduct of a regulated financial service provider involving—

- (a) the provision of a financial service by the financial service provider, or 25
- (b) an offer by the financial service provider to provide such a service, or
- (c) a failure by the financial service provider to provide a particular financial service that has been requested. 30

(2) Except in the case of a complaint that may be within the jurisdiction of the Pensions Ombudsman, the Financial Services Ombudsman has sole responsibility for deciding whether or not a complaint is within that Ombudsman's jurisdiction. 35

(3) A consumer is not entitled to make a complaint if the conduct complained of— 40

- (a) is or has been the subject of legal proceedings before a court or tribunal, or
- (b) occurred more than 6 years before the complaint is made, or 45
- (c) relates to a matter that is within the jurisdiction of the Pensions Ombudsman, or

(d) is of a class prescribed by Council Regulations.

5 (3A) Despite subsection (3)(a), the Financial Services Ombudsman may accept a complaint against a regulated financial services provider who has begun legal proceedings in relation to a matter to which the complaint relates, but only if that Ombudsman reasonably suspects that the regulated financial services provider has begun those proceedings in order to prevent the making of the complaint, or to frustrate or delay its investigation.

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15 (4) A consumer is entitled to make a complaint in respect of the conduct of a regulated financial service provider even if the conduct complained of occurred before the commencement of this section provided the conduct did not occur more than 6 years before that commencement.

20 (5) For the purpose of subsections (3) and (4), conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred.

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

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

40 (8) As soon as practicable after receiving a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman shall provide the financial service provider and the Regulatory Authority with a copy of the complaint. This subsection extends to any document purporting to be a complaint even if the Financial Services Ombudsman subsequently decides that there is no jurisdiction to deal with the document as a complaint under this Part.

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

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

(11) If the Regulatory Authority receives a complaint that appears to be within the jurisdiction of the Financial Services Ombudsman, it shall, without delay, refer the complaint to that Ombudsman for investigation. A complaint referred under this subsection is, for the purposes of this Part, taken to have been made under subsection (1) by the consumer concerned.

Duty of Financial Services Ombudsman to investigate complaints.

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

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

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

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

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

(a) the complaint is frivolous or vexatious or was not made in good faith, or

(b) the subject-matter of the complaint is trivial, or

(c) the conduct complained of occurred at too remote a time to justify investigation, or

(d) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or

(e) the complainant has no interest or an insufficient interest in the conduct complained of.

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

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

(4) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Financial Services Ombudsman shall—

(a) inform the complainant in writing of the decision and the reasons for it, and

(b) provide the Regulatory Authority with a copy of the decision.

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

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

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

(3) Evidence of anything said or admitted during a mediation, or an attempted mediation, of a complaint, and any document prepared for the purposes of the mediation, are not admissible—

(a) in any subsequent investigation, under this Part, of the complaint (unless the person who made the

admission, or to whom the document relates, consents to its admission), or

(b) in any proceedings before a court or a tribunal. 5

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

(a) deal with the complaint by adjudication, and 10

(b) notify the parties accordingly.

Persons entitled to make certain submissions to Financial Services Ombudsman.

57CB.—When investigating a complaint, the Financial Services Ombudsman shall provide the parties with an opportunity to make submissions with respect to the conduct complained of. 15

Financial Services Ombudsman to conduct investigations in private.

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

Progress report to complainant.

57CD.—The Financial Services Ombudsman may, in the course of investigating a complaint, periodically report to the complainant on the progress of the investigation and, in so doing, may make such comments to the complainant on the investigation and its consequences and implications as that Ombudsman thinks fit. 20
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Financial Services Ombudsman can require regulated financial service provider to give information.

57CE.—(1) To enable a complaint to be investigated, the Financial Services Ombudsman may require the regulated financial service provider concerned and any associated entity of that financial service provider— 30

(a) to provide information either orally or in writing, or

(b) to produce any document or other thing, or 35

(c) to provide a copy of any document,

that appears to that Ombudsman to be relevant to the investigation. However, this subsection does not authorise the Financial Services Ombudsman to require the provision of information, or the production of a document or copy of a document, the communication of which is subject to legal professional privilege. 40

(2) A requirement under this section may be made orally or be in writing but must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance. 45

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

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

15 (a) summon any officer, member, agent or employee of the financial service provider to attend before that Ombudsman, and

20 (b) examine on oath any such officer, member, agent or employee in relation to any matter that appears to that Ombudsman to be relevant to the investigation or adjudication.

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

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

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

40 (a) if the information or answer was provided on oath, perjury, or

(b) an offence against section 57CH.

45 Financial Services Ombudsman may enter premises of regulated financial service provider or associated entity of such a provider.

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

50 (a) enter and inspect any business premises occupied or used by the financial service provider or by any other body or person who appears to that Ombudsman to be associated with that provider,

and

(b) inspect any document or thing in or on the premises.

(2) If a document is kept in a non-legible form, the Financial Services Ombudsman may request the person apparently in charge of the document to reproduce it in a legible form or to give to that Ombudsman such information as that Ombudsman reasonably requires in relation to the document. 5
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Circuit Court may order person to comply with requirements, etc., of Financial Services Ombudsman.

57CG.—(1) The Financial Services Ombudsman may apply to the Circuit Court for a compliance order against a person if it appears to that Ombudsman that the person— 15

(a) has failed to comply with a requirement made to the person by that Ombudsman under section 57CE, or

(b) has failed to comply with a summons under that section to appear before that Ombudsman for examination, or 20

(c) having complied with such a summons, has refused to be examined, or 25

(d) has otherwise obstructed that Ombudsman in the exercise of a power conferred by this Part.

(2) If, on hearing an application seeking a compliance order against a person, the Circuit Court is satisfied that the person has failed or refused to do the act in question, the Circuit Court may make an order requiring the person to do that act. 30
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(3) The Circuit Court may not hear an application for a compliance order unless—

(a) the person against whom the order is sought appears at the hearing, or

(b) the Court is satisfied that that person has been served with a copy of the application. 40

(4) On the hearing of an application for a compliance order against a person, the Circuit Court shall set aside a requirement made to the person— 45

(a) to provide information, or

(b) to produce a document or other thing, or

(c) to provide a copy of a document,

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

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

57CH.—A person who—

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

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

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Adjudication of
complaints.

57CI.—(1) On completing an investigation of a complaint that has not been settled or withdrawn, the Financial Services Ombudsman shall make a finding in writing that the complaint—

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

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

- (a) the conduct complained of was contrary to law;
- (b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
- (c) although the conduct complained of was in accordance with a law or an established practice or regulatory

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- standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant; 5
- (d) the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration;
- (e) the conduct complained of was based wholly or partly on a mistake of law or fact; 10
- (f) an explanation for the conduct complained of was not given when it should have been given; 15
- (g) the conduct complained of was otherwise improper.
- (3) The Financial Services Ombudsman shall include in a finding—
- (a) reasons for the finding, and 20
- (b) any direction given under subsection (4) as a result of the finding.
- (4) If a complaint is found to be wholly or partly substantiated, the Financial Services Ombudsman may direct the financial service provider to do one or more of the following: 25
- (a) to review, rectify, mitigate or change the conduct complained of or its consequences;
- (b) to provide reasons or explanations for that conduct; 30
- (c) to change a practice relating to that conduct;
- (d) to pay an amount of compensation to the complainant for any loss, expense or inconvenience sustained by the complainant as a result of the conduct complained of; 35
- (e) to take any other lawful action. 40
- (5) The Financial Services Ombudsman may not direct the payment of an amount of compensation exceeding an amount (if any) prescribed by Council Regulations.
- (6) A direction requiring a regulated financial service provider to pay an amount of compensation may provide for interest to be paid 45

at a specified rate if the amount is not paid by a date specified in the direction.

(7) The Financial Services Ombudsman shall give a copy of a finding under this section—

- (a) to the complainant, and
- (b) to the regulated financial service provider to which the complaint relates, and
- (c) to the Council, and
- (d) to the Regulatory Authority.

(8) If a finding under this section contains a direction under subsection (4), the financial service provider concerned—

- (a) shall comply with the direction within such period as is specified in the direction, or within such extended period as the Financial Services Ombudsman allows, and
- (b) shall, within 14 days after the end of that period or extended period, notify in writing the Financial Services Ombudsman of action taken or proposed to be taken in consequence of the direction.

(9) Subject to the outcome of any appeal against a finding of the Financial Services Ombudsman in respect of a complaint, the finding is binding on the complainant, the regulated financial service provider concerned and every other person who is a party to the complaint.

Enforcement of
Financial Services
Ombudsman's
directions.

57CJ.—(1) In this section—

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

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

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

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

(a) the regulated financial service provider concerned appears at the hearing as respondent to the application, or

(b) if that financial service provider does not appear at the hearing, the Court is satisfied that a copy of the application has been served on that financial service provider. 5

(4) On hearing an application for an order to enforce the direction, the Circuit Court shall, if satisfied that the direction was one that the Financial Services Ombudsman was empowered to make, make an order requiring the regulated financial service provider concerned to comply with the direction within a period, or by a date, specified in the order. 10 15

(5) The Circuit Court may not hear an application for an enforcement order in respect of a direction if the regulated financial service provider concerned has appealed against the finding in which the direction is included and either— 20

(a) the finding or direction has not been affirmed (with or without modification), or 25

(b) that financial service provider has not withdrawn the appeal.

(6) If, on the hearing of an application for an enforcement order, the Circuit Court is satisfied that, because of the lapse of time, it would not be possible for the regulated financial service provider concerned to comply with such an order, the Court shall make an order providing the complainant with such redress as it considers appropriate in the circumstances. 30 35

(7) If an enforcement order requires a regulated financial service provider to pay an amount of money, the Circuit Court may direct that financial service provider to pay to the complainant concerned interest on the amount for all or a specified part of the period— 40

(a) beginning 4 weeks after the date on which the direction was given to that financial service provider, and 45

(b) ending with the date of the order.

(8) The interest payable on such an amount is to be at the rate referred to in section 22 of the Courts Act 1981. 50

References and Appeals under this Part to the High Court

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

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

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

20 (a) make a finding to which the question is relevant while the reference is pending, or

(b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the High Court on the question.

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

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

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

35 (a) within such period and in such manner as is prescribed by rules of court of the High Court, or

(b) within such further period as that Court may allow.

40 Orders on appeal to the High Court relating to Financial Services Ombudsman’s finding. 57CM.—(1) The High Court is to hear and determine an appeal made under section 57CL and may make such orders as it thinks appropriate in light of its determination.

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

(a) an order affirming the finding of the Financial Services Ombudsman, with or without modification;

(b) an order setting aside that finding or any direction included in it;

(c) an order remitting that finding or any such direction to that Ombudsman for review. 5

(3) If the High Court makes an order remitting to the Financial Services Ombudsman a finding or direction of that Ombudsman for review, that Ombudsman is required to review the finding or direction in accordance with the directions of the Court. 10

(4) The determination of the High Court on the hearing of such an appeal is final, except that a party to the appeal may apply to the Supreme Court to review the determination on a question of law (but only with the leave of either of those Courts). 15

Appeal stays the finding of the Financial Services Ombudsman.

57CN.—A finding of the Financial Services Ombudsman does not take effect, and may not be implemented, while an appeal under section 57CL or an application under section 57CM(4) is pending in relation to the finding. 20

CHAPTER 7

Supplementary provisions

Protection and other provisions relating to disclosures of information.

57CO.—(1) A provision of any Act or law that prohibits or restricts the disclosure of information does not— 25

(a) operate to prevent or restrict the disclosure of information, or

(b) affect a duty to disclose information, 30

under this Part.

(2) A person who discloses information under or for the purpose of this Part does not incur liability for defamation or other civil liability only because of the disclosure. 35

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

Power of Court to grant injunctions in certain cases.

57CP.—(1) The High Court may, on an application made by the Financial Services Ombudsman, grant an injunction restraining conduct in which a regulated financial service provider is engaging or in which a regulated financial service provider appears likely to engage, if the conduct is conduct that is being investigated or is proposed to be investigated under this Part. 40 45

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

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

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Financial Services Ombudsman and Council to co-operate with Regulatory Authority and others.

57CQ.—(1) The Council and the Financial Services Ombudsman shall co-operate with the Regulatory Authority (and, in particular, the Consumer Director) 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.

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

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

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(3) As soon as practicable after the commencement of this section, the Financial Services Ombudsman, the Pensions Ombudsman and the Regulatory Authority shall enter into a memorandum of understanding setting out the terms under which they agree to give effect to this section.

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CHAPTER 8

Reciprocal arrangements with corresponding agencies of other EEA Countries

Definitions (Chapter 8).

57CR.—(1) In this Chapter—

‘complaint’ includes a complaint within the meaning of the EEA Memorandum of Understanding; 5

‘EEA Memorandum of Understanding’ means the Memorandum of Understanding on a Cross-border Out-of-court Complaints Network for Financial Services in the European Economic Area or, if the memorandum is amended or is replaced by another memorandum, means the memorandum as so amended or that other memorandum. 15

Financial Services Ombudsman may subscribe to EEA Memorandum of Understanding.

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

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

57CT.—If the Financial Services Ombudsman subscribed to the EEA Memorandum of Understanding, that Ombudsman may refer a complaint made to that Ombudsman to another EEA dispute settlement body in accordance with the terms of that Memorandum. 20 25

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

57CU.—If the Financial Services Ombudsman has subscribed to the EEA Memorandum of Understanding, that Ombudsman may mediate, investigate and adjudicate on any complaint referred to that Ombudsman by another EEA dispute settlement body in accordance with the terms of that Memorandum.”. 30

New Part VIIC inserted into Central Bank Act 1942.

13.—The Central Bank Act 1942 is amended by inserting the following Part after Part VIIB (as inserted by *section 12* of this Act): 35

“PART VIIC

CONSULTATIVE PANELS

CHAPTER 1

General

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Interpretation: Part VIIC.

57CV.—In this Part—

‘advisory group’ means an advisory group established under section 57DG;

‘Consultative Consumer Panel’ means the Financial Services Consultative Consumer Panel established under section 57CW; 45

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

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

‘policy document’ means any document that embodies policies or principles relating to the regulation of financial services within the State;

‘proposed policy document’ means any document that embodies proposals for policies or principles relating to the regulation of financial services within the State;

‘proposed regulatory document’ means a regulation, rule, code of conduct or other document that is proposed to have legislative effect with respect to financial service providers or any specified class of financial service providers;

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

‘regulatory document’ means a regulation, rule, code of conduct or other document that has legislative effect with respect to financial service providers or any specified class of financial service providers.

Establishment and membership of Consultative Panels.

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

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

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

CHAPTER 2

Consultative Consumer Panel

Membership of Consultative Consumer Panel.

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

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

(3) In appointing persons as members to the Consultative Consumer Panel, the Minister shall ensure as far as possible that those persons have knowledge or experience of or as consumers of financial services. 5

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

(a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member, or 10

(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or 15

(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member. 20

(5) A member of the Consultative Consumer Panel holds office for such period, not exceeding 5 years, as is specified in the member's document of appointment, unless the member ceases to hold office under Schedule 8. 25

(6) A member is eligible for reappointment at the end of a period of office. 30

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

Functions of Consultative Consumer Panel.

57CY.—The functions of the Consultative Consumer Panel are as follows: 35

(a) to monitor the performance by the Regulatory Authority of its functions and responsibilities under this Act;

(b) to provide the Regulatory Authority with comments with respect to the performance of its functions and responsibilities; 40

(ba) to provide the Regulatory Authority with comments and suggestions with respect to the performance of the financial services industry; 45

(c) to provide the Regulatory Authority with suggestions for initiatives that, in the Panel's opinion, that Authority should take with respect 50

to the performance of its functions and responsibilities;

5 (d) when the Regulatory Authority so requests, to comment on a policy document or regulatory document, or a proposed policy document or proposed regulatory document, prepared by that Authority;

10 (e) to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year.

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

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

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

CHAPTER 3

Consultative Industry Panel

30 Membership of Consultative Industry Panel.

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

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

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

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

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

(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or 5

(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member. 10

(5) A member of the Consultative Industry Panel holds office for such period, not exceeding 5 years, as is specified in the member's document of appointment, unless the member ceases to hold office under Schedule 8. 15

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

(7) The Minister shall appoint one of the members of the Consultative Industry Panel to be chairperson of the Panel. 20

Functions of
Consultative
Industry Panel.

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

(a) when the Regulatory Authority so requests, to comment on a policy document or regulatory document, or a proposed policy document or proposed regulatory document, prepared by that Authority; 25 30

(b) to provide the Regulatory Authority with comments on levies and fees that that Authority proposes to prescribe under section 33J or 33K; 35

(c) to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year; 40

(d) to provide the Regulatory Authority with comments on the impact that the conditions and restrictions imposed by that Authority on financial service providers have on the competitiveness of those providers; 45

(e) to provide the Regulatory Authority with comments with respect to changing trends within the financial services industry that have implications for the functions and responsibilities of that Authority. 50

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

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

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

CHAPTER 4

Provisions Applying to Both Consultative Panels

15 Schedule 8 to have effect with respect to Consultative Panels.

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

20 Consultative Panel to prepare annual report.

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

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

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

30 (a) comments made by a Consultative Panel to that Authority in accordance with a provision of this Part, and

(b) any statement of reasons given by that Authority in response to any such comments, and

35 (c) reports of meetings of the Consultative Panels and advisory groups, and

(d) any other report produced or commissioned by a Consultative Panel or an advisory group, and

40 (e) the rules of procedure of the Consultative Panels.

45 Responsibilities of Regulatory Authority and Minister with respect to Consultative Panels.

57DF.—(1) Before making or issuing a policy document or a regulatory document, the Regulatory Authority shall consult each Consultative Panel, unless that Authority believes that the document must be made or issued without delay. In that case, the Regulatory

Authority shall consult each of the Panels as soon as possible after the document is made or issued.

(2) In making or issuing a policy document or regulatory document, the Regulatory Authority shall take into account the advice (if any) provided by a Consultative Panel on any aspect of the document. If the Regulatory Authority declines to give effect to any particular advice provided by the Panel, it shall provide the Panel with a written statement setting out its reasons for declining to give effect to the advice and shall, if the Panel so requires, publish the statement. 5
10

(3) The Minister shall consult each Consultative Panel before approving the Regulatory Authority's draft estimate of income and expenditure for a financial year. 15

(4) If the Regulatory Authority makes or issues a policy document or regulatory document, a failure of that Authority to comply with subsection (1) in relation to the document does not of itself invalidate the document. 20

Establishment and operation of advisory groups.

57DG.—(1) A Consultative Panel, or the Consultative Panels jointly, may, with the consent of the Regulatory Authority, establish advisory groups to advise the Panel or Panels on any matter relating to financial services or providers of those services on which the Panel or Panels ask for advice. 25
30

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

(3) As soon as practicable after being asked by a Consultative Panel, or by the Consultative Panels jointly, to provide advice on a matter, an advisory group shall provide the advice to the Panel or Panels that asked for the advice. 35
40

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

(a) the Consultative Panel that established it, or 45

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

(5) An advisory group may decide its own procedure for convening meetings of the group and for the conduct of business at those meetings. 50

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

(a) the Consultative Panel that established it, or

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

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

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

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

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

(8) The fact that an advisory group has been dissolved under subsection (7) does not prevent another advisory group or other advisory groups from being established under this section.

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

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

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

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

14.—Section 61E of the Central Bank Act 1942 (as inserted by section 30 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

Amendment of section 61E of Central Bank Act 1942.

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

“(ga) the Financial Services Ombudsman,

(gb) the Pensions Ombudsman,”,

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

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

“(i) any body established by or under an enactment
for the purpose of supervising the conduct of
auditors.”. 5

Insertion of new
section 61G into
Central Bank Act
1942.

15.—The Central Bank Act 1942 is amended by inserting the following section after section 61F (as inserted by section 30 of the Central Bank and Financial Services Authority of Ireland Act 2003):

“How the Bank
may give or serve
notices and other
documents.

61G.—(1) If a provision of this Act or 10
the regulations, or a provision of a designated
enactment or designated statutory instrument,
requires or authorises the Bank or the Regu-
latory Authority to give or serve a notice or
other document, the notice or other document 15
may be given or served—

(a) in the case of a natural person—

(i) by delivering the notice or
other document to the person
personally, or 20

(ii) by leaving the notice or other
document at, or by sending it
by prepaid post to, the per-
son’s residential or business
address last known to the 25
Bank or Regulatory Authority,

or

(b) in the case of a body corporate—

(i) by leaving the notice or other
document at, or 30

(ii) by sending it by prepaid post
to, the head office, a regis-
tered office or a principal
office of the body corporate,

or 35

(c) in the case of a partnership—

(i) by delivering the notice or
other document to one of the
partners personally, or

(ii) by leaving the notice or other 40
document at, or by sending it
by prepaid post to the head
office or a principal office of
the partnership.

(2) Nothing in this section limits the oper- 45
ation of any provision of any law that requires
or authorises a notice or other document to be
given or served in a manner not provided for
by this section.

- (3) The regulations may—
- (a) enable the Bank or Regulatory Authority to give or serve notices or other documents, or any specified class of notices or other documents, by a method other than one specified in subsection (1), and
 - (b) provide for a notice or document of a specified class to be given or served only in the manner prescribed by the regulations.”.

16.—(1) Schedule 2 to the Central Bank Act 1942 (as inserted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended in Part 1—

Amendment of Schedule 2 to Central Bank Act 1942 (Enactments and regulations under which Regulatory Authority is to perform functions of the Bank).

- (a) by deleting the item relating to the Criminal Justice Act 1994, and
- (b) in column 3 of the item relating to the Central Bank Act 1997, by inserting “and section 77” after “Parts II and III”.

(2) Schedule 2 to the Central Bank Act 1942 (as inserted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended by substituting “The whole instrument” for “First Schedule to Article 8” where those words appear in the item relating to the Building Societies Regulations 1987 in column 3 of Part 2.

17.—The Central Bank Act 1942 is amended by inserting the following Schedule after Schedule 4 (as amended by section 32 of the Central Bank and Financial Services Authority of Ireland Act 2003):

Insertion into Central Bank Act 1942 of new Schedule 4A.

“SCHEDULE 4A Section 33AO(5).

PROVISIONS APPLICABLE TO MEMBERS OF THE REGULATORY AUTHORITY SANCTIONS PANEL

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

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

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

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

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

Fees and other amounts payable to members of the Panel.

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

(2) The Regulatory Authority may also reimburse a member of the Panel for expenses properly incurred in the performance of the member's functions. 5

Vacancy in office of member of Panel.

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

(a) dies, or 10

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

(c) resigns the office by notice in writing given to the Regulatory Authority, or 15

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

(e) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or 20

(f) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or 25

(g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or 30

(h) becomes physically or mentally incapable of performing the functions of a member of the Panel, or

(i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or 35

(j) is removed from office by a resolution passed in accordance with subparagraph (2). 40

(2) A member of the Panel can be removed from office only by a resolution of the Regulatory Authority on the ground of proven misbehaviour or incapacity. 45

Filling vacancy in office of member.

5.—(1) If the office of a member of the Panel becomes vacant, the Regulatory Authority is required to arrange for a suitably qualified person to be appointed to fill the

vacancy in accordance with this Act within 60 days after the date on which the vacancy occurred.

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

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

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

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

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

30 **18.**—Schedule 5 to the Central Bank Act 1942 (as inserted by section 33 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended in paragraph 12(2) by substituting “under section 57F” for “by or under this Schedule”.
Amendment of Schedule 5 to Central Bank Act 1942 (Provisions applicable to members of the Appeals Tribunal).

19.—The Central Bank Act 1942 is amended by inserting the following Schedules after Schedule 5 (as inserted by section 33 of the Central Bank and Financial Services Authority of Ireland Act 2003):
Insertion into the Central Bank Act 1942 of new Schedules 6 and 7.

35 “SCHEDULE 6 Section 57BC.

FINANCIAL SERVICES OMBUDSMAN COUNCIL

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

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

Members of Council entitled to certain fees and allowances.

3.—Members of the Council are entitled to be paid such fees and travelling and subsistence allowances as the Minister approves. Those fees and allowances are payable out of the funds of the Bureau. 5

Termination of membership of Council.

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

- (a) dies, or
- (b) completes a term of office and is not reappointed, or 10
- (c) resigns the office by notice in writing addressed to the Minister, or
- (d) has, without the permission of the other members, been absent from meetings of the Council for a consecutive period of 6 months, or 15
- (e) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas, or 20
- (f) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or 25
- (g) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or
- (h) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or 30
- (i) becomes physically or mentally incapable of performing the duties of a member, or 35
- (j) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or
- (k) is removed from office under subparagraph (2). 40

(2) The Minister may remove an appointed member from office—

- (a) for proven misconduct or incompetence, or 45
- (b) in order to enable the Council to function effectively.

5	Filling vacancy in office of member.	<p>5.—(1) If the office of a member becomes vacant, the Minister is required to arrange for a suitably qualified person to be appointed to fill the vacancy in accordance with this Act within 60 days after the date on which the vacancy occurred.</p> <p>(2) Subparagraph (1) does not apply if the term of office of the member concerned was due to expire within 60 days after the vacancy occurred.</p>
15	Procedure for convening and holding meetings of Council.	<p>6.—The procedure for convening meetings of the Council and for the conduct of business at those meetings is, subject to this Schedule, to be as determined by the Council. The Council may determine that procedure by means of rules or standing orders or by any other means.</p>
20	Quorums at meetings of Council.	<p>7.—The quorum for a meeting of the Council is a majority of the members of the Council.</p>
25	Who is to preside at meetings of Council.	<p>8.—A meeting of the Council is to be presided over by—</p> <p>(a) the Chairperson, or</p> <p>(b) in the absence of the Chairperson, a member elected by the members of the Council present at the meeting.</p>
30	Voting at Council meetings.	<p>9.—(1) A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.</p> <p>(2) If the votes are equal on a motion put at a meeting of the Council, the person who is presiding at the meeting has a casting as well as a deliberative vote.</p>
35	Transaction of business otherwise than at ordinary meetings.	<p>10.—(1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all its existing members. A resolution approved in writing by a majority of those members is taken to be a decision of the Council.</p> <p>(2) The Council may, if it thinks fit, transact any of its business at a meeting at which its members (or some of its members) participate by telephone, closed circuit television or other means, but only if any member who speaks on a matter being considered by the meeting can be heard by the other members. For the purposes of—</p> <p>(a) the approval of a resolution under subparagraph (1), or</p>
50		

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

the members of the Council have the same voting rights as they have at an ordinary meeting of the Council. 5

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

SCHEDULE 7 Section 57BJ, 57BL, 57BN. 10

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

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

1.—(1) A person ceases to hold office as the Financial Services Ombudsman or as a Deputy Financial Services Ombudsman if the person— 15

- (a) dies, or
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by notice in writing addressed to the Council, or 20
- (d) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas, or 25
- (e) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or 30
- (f) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or
- (g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or 35
- (h) becomes physically or mentally incapable of performing the duties of Financial Services Ombudsman or Deputy Financial Services Ombudsman, or 40
- (i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or 45

(j) is removed from office under subparagraph (2).

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

(a) for proven misconduct or incompetence, or

(b) if the removal appears to the Council to be necessary for the effective performance of the functions of the office concerned.

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

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

(2) A decision of the Council under this paragraph does not take effect until approved by the Minister.

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

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

Superannuation schemes for the benefit of Financial Services Ombudsman and Deputy Financial Services Ombudsmen.

4.—(1) In this paragraph—
'superannuation scheme' means a superannuation scheme prepared under subparagraph (2) or (4), and if the scheme is amended in accordance with this paragraph, means the scheme as amended;

'beneficiary' means the Financial Services Ombudsman or a Deputy Financial Services Ombudsman or a person who formerly held either of those offices.

(2) The Council shall prepare a scheme for the provision of superannuation benefits to or in respect of the Financial Services Ombudsman and each Deputy Financial Services Ombudsman and any person who formerly held any of those offices. More than one scheme may be prepared under this subparagraph. However, a scheme prepared under this subparagraph does not take effect until the Minister has approved it.

(3) The Council shall ensure that a superannuation scheme prescribes the conditions under which a beneficiary and the beneficiary's dependants will be eligible to receive superannuation benefits under the scheme. Different conditions may be prescribed

according to the differing circumstances that apply to a particular beneficiary or the dependants of the beneficiary.

(4) The Council may from time to time prepare an amendment to a superannuation scheme, or a new superannuation scheme to be substituted for an existing scheme. However, an amendment to a superannuation scheme or a substituted superannuation scheme prepared under this subparagraph does not take effect until the Minister has approved it.

(5) The Council is responsible for ensuring that a superannuation scheme is approved by the Minister under this paragraph.

(6) Except with the written consent of the Minister, the Council may not provide superannuation benefits to or in respect of a beneficiary or make arrangements for the provision of such benefits otherwise than in accordance with a superannuation scheme approved by the Minister in accordance with this paragraph.

(7) The Council is responsible for conciliating and settling any dispute that arises in relation to a claim made by a beneficiary or a dependant of a beneficiary for or in respect of the payment of a superannuation benefit under a superannuation scheme approved by the Minister.

Superannuation schemes for the benefit of staff of the Bureau.

5.—(1) In this paragraph—

‘superannuation benefit’ means a superannuation benefit payable to a beneficiary or, if the beneficiary has died, to the spouse or a child of the beneficiary, and includes a pension, a retirement allowance and a gratuity;

‘superannuation scheme’ means a superannuation scheme prepared under subparagraph (2) or (4), and if the scheme is amended in accordance with this paragraph, means the scheme as amended;

‘beneficiary’ means a member or former member of the Bureau staff.

(2) The Council shall prepare a scheme for the provision of superannuation benefits to or in respect of members and former members of the Bureau staff. More than one scheme may be prepared under this subparagraph. However, a scheme prepared under this subparagraph does not take effect until the Minister has approved it.

(3) The Council shall ensure that a superannuation scheme prescribes the ages at which

5 a beneficiary must retire and the conditions under which a beneficiary and the beneficiary's dependants will be eligible to receive superannuation benefits under the scheme. Different retirement ages and eligibility conditions may be prescribed according to the differing circumstances that apply to a particular beneficiary or the dependants of the beneficiary.

10 (4) The Council may from time to time prepare an amendment to a superannuation scheme, or a new superannuation scheme to be substituted for an existing scheme. However, an amendment to a superannuation scheme, or a substituted superannuation scheme, prepared under this subparagraph does not take effect until the Minister has approved it.

20 (5) The Council is responsible for ensuring that a superannuation scheme is approved by the Minister in accordance with this paragraph.

25 (6) Except with the written consent of the Minister, the Council may not provide superannuation benefits to or in respect of a beneficiary or make arrangements for the provision of such benefits otherwise than in accordance with a superannuation scheme approved by the Minister in accordance with this paragraph.

30 (7) The Council is responsible for conciliating and settling any dispute that arises in relation to a claim made by a beneficiary or a dependant of a beneficiary for or in respect of the payment of a superannuation benefit under a superannuation scheme approved by the Minister.

40 Council to arrange for superannuation schemes and amendments to be laid before the Houses of the Oireachtas.

6.—(1) As soon as practicable after the Minister has approved a superannuation scheme or an amendment to such a scheme in accordance with paragraph 4 or 5, the Council shall arrange for a copy of the document embodying the scheme or amendment to be laid before each House of the Oireachtas.

45 (2) Within 21 sitting days after a superannuation scheme or an amendment to such a scheme is laid before a House of the Oireachtas in accordance with subparagraph (1), the House may pass a resolution annulling the scheme or amendment. However, the annulment of such a scheme or amendment does not affect the validity of anything previously done under the scheme or the scheme as amended.

55 (3) If an amendment to a superannuation scheme is annulled under subparagraph (2),

the scheme continues to have effect as if the amendment had never been made.”.

Insertion into
Central Bank Act
1942 of new
Schedule 8.

20.—The Central Bank Act 1942 is amended by inserting the following Schedule after Schedule 7 (as inserted by *section 19* of this Act):

5

“SCHEDULE 8

Section 57DD.

PROVISIONS APPLYING TO BOTH CONSULTATIVE PANELS

Members of
Consultative Panel
entitled to expense
allowances.

1.—A member of a Consultative Panel is entitled to be paid from the funds of the Regulatory Authority such attendance, travelling and subsistence allowances as that Authority determines. 10

Termination of
membership of
Consultative Panel.

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

(a) dies, or 15

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

(c) resigns from membership by notice in writing addressed to the Minister, or 20

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

(e) is, with the person’s consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or 25

(f) is, with the person’s consent, nominated as a candidate for election as a member of a local authority, or 30

(g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person’s creditors, or 35

(h) becomes physically or mentally incapable of performing the duties of a member, or

(i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or 40

(j) is removed from membership under subparagraph (3). 45

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

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

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

15 Meetings of Consultative Panels.

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

20 PART 3

AMENDMENT OF CENTRAL BANK ACT 1997

21.—(1) Section 2(1) of the Central Bank Act 1997 is amended— Amendment of section 2 of Central Bank Act 1997 (Interpretation).
(a) by inserting the following definitions after the definition of “Bank”:

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

‘contravene’ includes fail to comply;”;

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

“ ‘designated enactment’ means an enactment specified in Part 1 of Schedule 2 to the Central Bank Act 1942;

35 ‘designated statutory instrument’ means a statutory instrument specified in Part 2 of Schedule 2 to the Central Bank Act 1942;

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

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

“ ‘publication’ includes publication on an Internet website;

‘publish’ includes publish by means of the Internet;

‘record’ means any record of information, however compiled, recorded or stored, and includes—

- (a) any book, a register and any 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;

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

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

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

(3) Section 2 is amended by inserting the following subsection after subsection (2):

“(2A) For the purposes of this Act, a person is concerned in the management of a body corporate, if the person is in any way involved in directing, managing or administering the affairs of the body or firm.”.

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

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

Substitution of Part IV of the Central Bank Act 1997.

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

“PART IV 25

FUNCTIONS OF BANK WITH RESPECT TO REGULATED FINANCIAL SERVICE PROVIDERS

CHAPTER 1

Introductory

Interpretation (Part IV). 24.—(1) In this Part— 30

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

‘company’ has the same meaning as in section 2(1) of the Companies Act 1963; 35

‘firm’ has the same meaning as in section 4 of the Partnership Act 1890;

‘guideline’ means a guideline issued under section 27A or, if such a guideline is amended, means the guideline as amended; 40

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

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

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

‘work’, in relation to an auditor, includes all work of an accounting, financial or advisory nature that an auditor does for a financial service provider as well as work involved in auditing the financial service provider’s accounts.

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

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

could reasonably be considered to be associated with the auditor,

(b) in the case of an auditor who is a natural person— 5

(i) any partnership in which the auditor was, at any time in the financial year, a partner,

(ii) any body corporate in which the auditor, any partnership mentioned in subparagraph (i) or any body corporate mentioned in subparagraph (iii) was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting, 10 15

(iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in subparagraph (ii). 20

(3) For the purposes of this Part, a director of a regulated financial service provider that is a body corporate is taken to be concerned in the management of the financial service provider even though the director is not involved in its day to day management. 25 30

CHAPTER 2

Compliance and related statements

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

25.—(1) The Bank may, whenever it considers appropriate, serve on a regulated financial service provider a notice requiring the service provider to comply with this section. 35

(2) The Bank may also serve such a notice at the request of another public authority only if it is of the opinion that it would be in the public interest to do so. 40

(3) A notice must specify a reasonable period within which the requirement is to be complied with and, if the notice is served at the request of another public authority, it must specify the name and address of that authority. 45

(4) A regulated financial service provider on whom a notice is served shall provide the

Bank with a compliance statement within the required period.

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

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

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

(8) In this section—

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

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

25
30 Compliance statement to be accompanied by auditor’s report if required.

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

35 (2) Within such period as is specified in the notice, the auditor shall prepare a report about the relevant compliance statement and deliver the report to the financial service provider concerned.

(3) Such a report must—

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

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

50

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

(a) attach the report to the compliance statement, or 5

(b) if that statement has already been delivered to the Bank, deliver the report to the Bank, and if another public authority requested the compliance statement, also deliver a copy of the report to the public authority. 10

(5) If a report prepared in accordance with this section relates to a financial service provider that is a company, the auditor shall include a copy of the report in the auditor's report on the company's accounts that are required to be laid before the company in general meeting. 15 20

Offences under section 25 or 26.

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

(a) if tried summarily, liable on conviction to a fine not exceeding €2,000, or 25

(b) if tried on indictment, liable on conviction to a fine not exceeding €75,000. 30

(2) A regulated financial service provider who, having been convicted of an offence of failing to comply with a requirement of section 25 or 26, continues to fail to comply with the requirement commits a further offence on each day or part of a day during which the failure continues after that conviction and— 35

(a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or 40

(b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day. 45

(3) If a regulated financial service provider that is a body corporate commits an offence under subsection (1) or (2), each person who, at the time when the offence is found to have been committed, was concerned in the management of the body commits a separate offence, unless the person establishes that— 50

(a) the body committed the offence without the person's knowledge, or

(b) although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

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

(5) A person who is convicted of an offence under subsection (3) is liable to a fine not exceeding that prescribed by subsection (1) or (2) for a regulated financial service provider.

Bank may issue guidelines.

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

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

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

(a) stating that the guidelines have been issued, or have been amended or revoked, and

(b) specifying a place or places where copies of the guidelines, or the amendment or revocation, may be obtained.

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

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

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

(7) An amendment or revocation of a guideline issued under this section takes effect on the date on which notice of the amendment or revocation is published in *Iris Oifigiúil* or on such later date as is specified in the notice. 5

(8) All courts and tribunals are required to take judicial notice of guidelines in force under this section. 10

CHAPTER 3

Obligations of auditors of regulated financial service providers

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

27B.—(1) This section applies to an auditor who is required by or in accordance with a prescribed enactment to report a matter to the Bank. 15

(2) Within 3 months after the end of each financial year of a regulated financial service provider, or within such extended period as the Bank allows, the auditor of the service provider shall deliver a written report to the Bank— 20

(a) stating whether or not circumstances have arisen that require the auditor to report a matter to the Bank under a prescribed enactment and, if such circumstances have arisen, specify those circumstances, and 25

(b) where the service provider has, during that financial year, been required to provide the Bank with a compliance statement stating whether or not the requirement has been complied with. 30

(3) A report under this section must be in a form publicly notified by the Bank. 35

(4) The following are prescribed enactments for the purpose of this section:

(a) section 35 of the Insurance Act 1989;

(b) section 47 of the Central Bank Act 1989; 40

(c) section 89 of the Building Societies Act 1989;

(d) section 38 of the Trustee Savings Banks Act 1989; 45

(e) section 258 of the Companies Act 1990;

(f) section 15 of the Unit Trusts Act 1990;

(g) section 16 of the Investment Limited Partnership Act 1994;

5 (h) section 33 of the Investment Intermediaries Act 1995;

(i) section 34 of the Stock Exchange Act 1995;

10 (j) section 122 of the Credit Union Act 1997;

15 (k) regulations 7, 8 and 9 of the Supervision of Credit Institutions, Stock Exchange Members Firms and Investment Business Firms Regulations 1996;

(l) regulation 85 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003;

20 (m) any other provision of an Act or regulations declared under subsection (5) to be a prescribed enactment for the purpose of this section.

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

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

35 (2) If—

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

50 (b) the financial service provider or those persons comment on the draft in response to the invitation,

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

(3) If, in relation to the financial year of a regulated financial service provider, there has been no reason for the auditor of the service provider to provide such a report, the auditor shall nevertheless notify the Bank in writing that this is the case. 5

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

27D.—Whenever an auditor of a regulated financial service provider that is a company provides the Director of Corporate Enforcement with a report or other document in accordance with a requirement imposed by the Companies Acts or any other enactment, the auditor shall also provide the Bank with a copy of that report or document. The copy must be provided at the same time as, or as soon as practicable after, the original is provided to the Director of Corporate Enforcement. 10 15 20

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

27E.—(1) The Bank may, by notice in writing, request an auditor of a regulated financial service provider, or an affiliate of the auditor, to provide the Bank with a report on all or any of the following: 25

- (a) the service provider’s accounting or other records;
- (b) the systems (if any) that the service provider has in place to ensure that the service provider acts prudently in the interests of its members (if a company or firm) and the interests of those to whom the service provider provides financial services; 30 35
- (c) any other matter in respect of which the Bank requires information about the service provider, or the service provider’s activities, to enable the Bank to perform a function imposed on it by or under an Act. 40

(2) The auditor or affiliate shall comply with such a request within such period as is specified in the request, or within such extended period as the Bank may allow. 45

(3) If the Bank so directs, the auditor or affiliate shall not, without the consent of the Bank, disclose to the financial service provider concerned, or any person concerned in the management of, or employed by, that service provider— 50

(a) the fact that the auditor or affiliate has received a request under subsection (1), or

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

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

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

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

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

(a) the fact that the auditor or affiliate has received a request under subsection (1), or

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

Offences by auditors and affiliates under this Chapter.

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

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

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

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

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000. 5

(3) An auditor who, having been convicted of an offence of failing to comply with a provision of section 27B, 27C, 27D, 27E or 27F, continues to fail to comply with the provision 10 commits a further offence on each day or part of a day during which the failure continues after that conviction and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 15 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of 20 a day.

(4) An affiliate of an auditor who, having been convicted of an offence of failing to comply with a provision of section 27E or 27F, continues to fail to comply with the provision 25 commits a further offence on each day or part of a day during which the failure continues after that conviction and—

- (a) if tried summarily, is liable on conviction to a fine not exceeding €200 30 for each such day or part of a day, or
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of 35 a day.

Auditors to have certain immunities from liability.

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

- (a) contravene any duty of confidentiality owed to the service provider 40 or to its creditors or clients or, if the service provider is an incorporated or unincorporated body, to its members, or
- (b) incur any tortious liability, 45

only because the auditor or affiliate complies with a duty imposed on the auditor or affiliate by this Part.

CHAPTER 4

Supplementary provisions

- 5 Offence to provide false or misleading information for the purposes of this Part. 27I.—Any person who, in a return, statement or other document required by or under a provision of this Part or a regulation made for the purposes of this Part, provides information that the person knows, or ought reasonably to know, is false or misleading in a material respect commits an offence and is—
- 10 (a) if tried summarily, liable on conviction to a fine not exceeding €2,000 and to imprisonment for a term not exceeding 3 months, or both, or
- 15 (b) if tried on indictment, liable on conviction to a fine not exceeding €75,000 or to imprisonment for a term not exceeding 12 months, or both.
- 20 Who may prosecute offences against this Part that are to be tried summarily. 27J.—Proceedings for an offence against a provision of this Part that is to be tried summarily may be brought and prosecuted only by the Bank or the Director of Public Prosecutions.
- 25 Limitation period for bringing proceedings for summary trial of offence against this Part. 27K.—Proceedings for an offence against a provision of this Part that is to be tried summarily may be brought at any time within 2 years after the date on which the offence is alleged to have been committed or, if the commission of the offence is discovered after the end of that period, within 2 years after the discovery of the commission of the offence. This section has effect despite section 10(4) of the Petty Sessions (Ireland) Act 1851.”.
- 30
- 35 **24.**—The Central Bank Act 1997 is amended by substituting the following Part for Part V: Substitution of Part V of Central Bank Act 1997.

“PART V

SUPERVISION OF REGULATED BUSINESSES

CHAPTER 1

40 *Introductory provisions*

Definitions (Part V).

28.—In this Part—

‘Appeals Tribunal’ means the Irish Financial Services Appeals Tribunal established under Part VIIA of the Central Bank Act 1942;

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

(a) a bureau de change business, or

(b) a money transmission business,

and, if an authorisation is amended in accordance with section 35, means the authorisation as amended; 5

‘bureau de change business’ means a business that comprises or includes providing members of the public with a service that involves buying or selling foreign currency, other than a service that is provided— 10

(a) by a person or body regulated by the Bank referred to in section 32(1)(a) to (k) of the Criminal Justice Act 1994, or

(b) by a person or body prescribed as a designated body under section 32(10)(a) of that Act (but only if the person or body is regulated by the Bank under a designated enactment or designated statutory instrument), or 15 20

(c) by a person or body on an ancillary basis in the ordinary course of providing services to customers of the person or body; 25

‘inspector’ means a person holding office as an inspector under section 36H;

‘money’ includes any representation of money (such as a cheque) and any means by which monetary value is stored; 30

‘money transmission business’ means a business that comprises or includes providing a money transmission service to members of the public;

‘money transmission service’ means a service that involves transmitting money by any means, other than such a service provided— 35

(a) by a person or body referred to in section 32(1)(a) to (k) of the Criminal Justice Act 1994, or 40

(b) by a person or body prescribed as a designated body under section 32(10)(a) of that Act (but only if the person or body is regulated by the Bank under a designated enactment or designated statutory instrument), or 45

(c) by a person or body on an ancillary basis in the ordinary course of providing services to customers of the person or body;

5 'officer', in relation to a person that is a body corporate, means any person concerned in the direction or management of the body;

'regulated business' means a bureau de change business or a money transmission business;

10 'this Part' includes all regulations in force under this Part;

'transmitting' includes transmitting—

(a) by means of a message or other form of communication, or

15 (b) by means of a transfer instrument, or

(c) by means of a clearing network.

CHAPTER 2

Regulation of bureaux de change and money transmission businesses

20 Person prohibited from carrying on regulated business without authorisation. 29.—(1) A person shall not carry on a regulated business unless the person is the holder of an authorisation.

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

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

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

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

35 (a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or

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

45 (4) This section does not have effect in relation to a person who carries on a money

CHAPTER 3

5

Authorisations to carry on regulated businesses

Applications for authorisations.

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

(2) An application must— 10

(a) be in a form provided or specified by the Bank, and

(b) contain such information, and be accompanied by such documents, as the Bank requests, and 15

(c) be accompanied by the fee (if any) prescribed under section 33K of the Central Bank Act 1942 for the purposes of this subsection.

(3) The Bank may, by written notice given to an applicant, require the applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a period specified in the notice, not less than 14 days, the Bank may refuse the application. 20 25

Grant and refusal of applications for authorisation.

31.—(1) Except as provided by subsection (2), the Bank shall grant an application for an authorisation that complies with section 30. 30

(2) The Bank may refuse an application for an authorisation that complies with section 30 only if it is of the opinion that—

(a) to grant the application would be inconsistent with the effective enforcement of any law of the State the purpose of which is to prevent or inhibit money laundering or terrorism, or 35

(b) the applicant has failed to satisfy the Bank that the applicant is, or will be, able to properly fulfil the obligations imposed on holders of authorisations by or under this Part, or 40 45

(c) information given to the Bank by or on behalf of the applicant in connection with the application is materially false or misleading.

(3) If the Bank proposes to refuse an application, it shall serve on the applicant a notice in writing—

(a) specifying the grounds on which it is proposed to refuse the application, and

(b) informing the applicant that the applicant may, within 21 days after the giving of the notice, make written representations to the Bank showing why the application should be granted.

(4) Not later than 21 days after being given a notice under subsection (3), the applicant may make written representations to the Bank showing why the application should be granted.

(5) The Bank may refuse an application only after having considered any representations made by the applicant in accordance with subsection (4).

(6) If the Bank refuses an application, it shall immediately give to the applicant written notice of the refusal. The notice must include a statement setting out the reasons for the refusal.

(7) On granting an application for an authorisation, the Bank shall—

(a) record the appropriate particulars of the applicant in the register of persons authorised to carry on bureau de change businesses or money transmission businesses, and

(b) issue the applicant with an authorisation authorising the applicant to carry on the regulated business to which the application relates.

Effect and term of authorisation.

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

(2) An authorisation remains in force until revoked under this Part.

Bank may impose conditions when granting an application for an authorisation.

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

(2) If the Bank grants an application subject to conditions, it shall specify those conditions in the authorisation granted to the applicant or in one or more documents annexed to that authorisation. 5

Bank may amend authorisation.

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

- (a) by varying any of its conditions, or
- (b) by replacing or revoking an existing condition, or 10
- (c) by adding a new condition,

but only after giving to that holder a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to, the Bank in relation to the proposed amendment. 15

Offence to fail to comply with certain conditions and requirements.

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

- (a) the requirements imposed on holders of authorisations by this Part, and 20
- (b) the conditions (if any) of the authorisation, and
- (c) the requirements (if any) imposed by regulations in force under this Part. 25

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

- (a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or 30
- (b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

Revocation of authorisation by Bank on application of holder.

36.—The Bank shall revoke an authorisation on the application of the holder of the authorisation, but only if satisfied that the holder of the authorisation has fully complied with the provisions of this Part and the conditions of the authorisation. 35

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

36A.—(1) The Bank may revoke an authorisation on being satisfied on reasonable grounds that— 40

- (a) the holder of the authorisation has not begun to carry on a regulated business within 12 months after the date on which the authorisation was granted, or 45

- 5
- (b) the holder of the authorisation has not carried on such a business within the immediately preceding 6 months, or
- (c) the authorisation was obtained by means of a false or misleading representation, or
- 10
- (d) the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply with a provision of this Part, a condition of the authorisation or a requirement imposed by or under this Part, or
- 15
- (e) if the holder of the authorisation is a natural person, the holder is adjudicated bankrupt, or
- 20
- (f) if the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890, or
- 25
- (g) if the holder of the authorisation is a body corporate, the winding-up of the body has commenced, or
- 30
- (h) the holder of the authorisation is so structured, or business of the holder is so organised, that the holder is no longer capable of being regulated to the satisfaction of the Bank, or
- 35
- (i) the circumstances under which the authorisation was granted have changed to the extent that an application for authorisation would be refused had the application been made in the changed circumstances, or
- 40
- (j) the holder of the authorisation suspends payments due to creditors, or is unable to meet any other obligations to creditors of the holder, or
- 45
- (k) if the holder of the authorisation is a branch or subsidiary of a body corporate that has its head office in another country that is an EEA country, the authority of that other country that performs functions similar to those of the Bank under this Part has terminated the authority of that body to carry on a
- 50

regulated business in that other country, or

(l) the holder of the authorisation, or officer of that holder, is convicted of— 5

(i) an offence against this Part or against any other designated enactment or designated statutory instrument, or

(ii) an offence involving fraud, dishonesty, breach of trust, money laundering or financing terrorism. 10

(2) If the Bank proposes to revoke an authorisation, it shall serve on the holder of the authorisation a notice in writing informing the holder of the Bank's intention to revoke the authorisation. The notice must— 15

(a) specify the grounds on which it is proposed to revoke the authorisation, and 20

(b) inform the holder of the authorisation that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the authorisation should not be revoked. 25

(3) Not later than 21 days after a notice is served on the holder of an authorisation in accordance with subsection (2), the holder may make written representations to the Bank showing why the authorisation should not be revoked. 30

(4) The Bank may revoke the authorisation only after having considered any representations made by the holder of the authorisation in accordance with subsection (3). 35

(5) As soon as practicable after revoking an authorisation under this section, the Bank shall give written notice of the revocation to the person who was the holder of the authorisation. The notice must include a statement of the reasons for revoking the authorisation. 40

(6) Unless the Appeals Tribunal otherwise orders, revocation of an authorisation under this section takes effect on and from the date of the notice of revocation or, if a later date is specified in the notice, on and from that date, irrespective of whether an appeal against the revocation is made under Part VIIA of the Central Bank Act 1942. 50

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

(2) A direction given under this section—

(a) must include a statement of the Bank's reasons for giving the direction and specify the conditions with which the holder of the authorisation must comply, and

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

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

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

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

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

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

(a) at the end of the period specified in the direction, or if the period is extended under subsection (6), at the end of the extended period, or

(b) on the revocation of the holder's authorisation under this Part,

whichever first occurs.

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

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

Bank to publish notice of revocation or suspension.

36C.—As soon as practicable after revoking an authorisation under section 36 or 36A, or giving a direction under section 36B, the Bank shall publish in a publication of its choice a notice giving particulars of the revocation or direction.

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

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

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

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

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

(5) Members of the public are entitled, without charge, to inspect the register during the ordinary business hours of the Bank.

(6) A member of the public is entitled to obtain a copy of the register or of an entry in a register on payment of a fee of such amount (if any) as may be prescribed under section 33K of the Central Bank Act 1942 for the purposes of this subsection.

Bank to publish list of persons authorised to carry on regulated businesses.

36E.—The Bank shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in a publication of its choice a list of persons authorised to carry on regulated businesses. If regulations in force under this Part so require, the list must contain such other particulars as are prescribed by those regulations.

Holders of authorisations to keep certain records.

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

- (a) keep at an office or offices within the State such records as may be specified from time to time by the Bank, and

(b) notify the Bank in writing of the address of the office or offices where those records are kept.

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

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

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

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

CHAPTER 4

Enforcement of this Part

20 Appointment of inspectors.

36G.—(1) The Bank may, in writing, appoint employees of the Bank or other suitably qualified persons to be inspectors for the purpose of securing compliance with this Part, or with any specified provisions of that Part.

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

30 Powers of inspectors with respect to holders of authorisations.

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

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

(a) inspect the premises;

40 (b) request any person on the premises who apparently has control of, or access to, records that relate to a regulated business to produce the records for inspection;

45 (c) inspect records produced in accordance with such a request or found in the course of inspecting the premises;

(d) take copies of those records or of any part of them, and

(e) request any person who appears to the authorised person to have information relating to the records, or to a regulated business, to answer questions with respect to the records or that business. 5

(3) A person to whom a request is made in accordance with subsection (2) shall— 10

(a) comply with the request so far as it is possible to do so, and

(b) give such other assistance and information to the inspector with respect to the regulated business as is reasonable in the circumstances. 15

(4) The powers conferred by subsection (2) may also be exercised in relation to any other person who, in the opinion of the Bank or an inspector, has information that is materially relevant to the exercise of those powers in relation to a regulated business. 20

(5) The production of a record in compliance with a request made under this section does not prejudice a person's lien over the record. 25

(6) Nothing in this section requires a legal practitioner to produce a record that contains a privileged communication made by or to the practitioner or to disclose any information that relates to the communication. 30

(7) In this section—

'legal practitioner' means a barrister or solicitor;

'suitably qualified person' means any person (other than an employee of the Bank) who, in the opinion of the Bank, has the qualifications and experience necessary to exercise the powers conferred on inspectors by this section. 35

Offence to obstruct inspectors in the exercise of their powers.

36I.—A person who— 40

(a) obstructs an inspector in the exercise of a power conferred on inspectors by this Part, or

(b) without reasonable excuse, fails to comply with a requirement or request made by an inspector under this Part, or 45

(c) in purported compliance with such a requirement or request, gives

information that the person knows to be false or misleading,

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

Court may make enforcement orders.

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

(a) contravening a provision of this Part, or

(b) attempting to contravene such a provision, or

(c) aiding, abetting, counselling or procuring a person to contravene such a provision, or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision, or

(e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by a person of such a provision, or

(f) conspiring with others to contravene such a provision,

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

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

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

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

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

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

(7) If the Bank applies to the Court to make an order under this section, the Court may not require the applicant or any other person to give an undertaking as to damages as a condition of granting an interim order. 5

(8) The Court may discharge or vary an order made under this section. 10

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

(a) whether or not it appears to the Court that the person intends to repeat, or to continue, the conduct, and 15

(b) whether or not the person has previously engaged in that kind of conduct, and 20

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in that kind of conduct.

(10) The power of the Court to grant an injunction requiring a person to do an act may be exercised— 25

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act, and 30

(b) whether or not the person has previously refused or failed to do that act, and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act. 35

(11) Whenever the Court has power under this section to make an order restraining a person from engaging in particular conduct, or requiring a person to do a particular act, it may, either in addition to or instead of making such an order, order the person to pay damages to another person. 40 45

Offences by persons concerned in management of bodies corporate.

36K.—(1) If a body corporate commits an offence under this Part, each person who was, at the time the offence is found to have been committed, an officer of the body commits an offence, unless the person establishes that— 50

(a) the body committed the offence without the person's knowledge, or

(b) although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

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

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

(a) if tried summarily, liable on conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both, or

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

CHAPTER 5

Supplementary provisions

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

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

(a) the refusal of an application made under section 30;

(b) the imposition of conditions on the granting of an authorisation (not being conditions prescribed by regulations in force under this Part);

(c) the amendment of an authorisation under section 34;

(d) the revocation of an authorisation under section 36A;

(e) the giving of a direction under section 36B.

Bank may make regulations for purposes of this Part.

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

(2) A regulation under section 33J or 33K of the Central Bank Act 1942 may require holders of authorisations to pay a levy or fee for the purposes of this Part, or both a levy and fee.

(3) If a regulation under section 33J or 33K of the Central Bank Act 1942 imposes a requirement to pay a levy or fee to the Bank and the holder of an authorisation fails to pay the fee within the period, or by the date, specified in the regulation, the Bank may, by proceedings brought in a court of competent jurisdiction, recover the amount of the levy or fee from the holder as a debt due to the Bank.

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

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

or may do any combination of those things.

Performance and exercise of Bank's functions and powers to be consistent with performance of certain responsibilities of Governor.

36N.—The Bank shall perform and exercise the functions and powers imposed or conferred on it by this Part in a manner consistent with the performance by the Governor of the responsibilities imposed on the Governor by section 19A of the Central Bank Act 1942.”.

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

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

Amendment of section 75 of Central Bank Act 1997 (Powers of inspection).

26.—Section 75 of the Central Bank Act 1997 (as amended by item 5 of Part 23 of Schedule 1 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended in subsection (8) by substituting the following definition for the definition of “responsible authority”:

“ ‘responsible authority’ means the Chief Executive of the Irish Financial Services Regulatory Authority.”.

Amendment of section 76 of Central Bank Act 1997 (Search and seizure).

27.—Section 76 of the Central Bank Act 1997 is amended by inserting the following subsection after subsection (2):

“(3) In this section, ‘appropriate person’ has the same meaning as it has in section 75.”.

28.—Section 77 of the Central Bank Act 1997 is amended in subsection (1) by inserting “or constituent part” after “subsidiary”.

Amendment of section 77 of Central Bank Act 1997 (Examination by Comptroller and Auditor General).
Amendment of section 84 of Central Bank Act 1997 (Representative offices).

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

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PART 4

AMENDMENT OF OTHER LEGISLATION

30.—The Acts specified in *Schedule 3* are amended as indicated in that Schedule.

Miscellaneous amendments to other Acts administered by the Bank.

31.—The Regulations specified in *Schedule 4* are amended as indicated in that Schedule.

10

Amendment of European Communities Regulations administered by the Bank.

32.—The savings and transitional provisions set out in *Schedule 5* have effect.

Savings and transitional provisions.

SCHEDULE 1

Section 10(2).

AMENDMENT OF ACTS CONSEQUENTIAL ON INSERTION INTO CENTRAL BANK ACT 1942 OF PART IIIC

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PART 1

AMENDMENT OF CENTRAL BANK ACT 1971

Item	Provision affected	Amendment
20	1. Section 21 (as substituted by section 38 of the Central Bank Act 1989)	Substitute the following section: “Bank may give certain directions to holders of licences. 21.—(1) In this section— ‘banking activity’ means— (a) carrying on banking business, or (b) making payments other than those that are specifically connected with carrying on banking business, or (c) acquiring or disposing of assets or liabilities; ‘prescribed circumstance’, in relation to the holder of a licence, means any of the following: (a) the holder has become or is likely to become unable to meet its obligations to its creditors; (b) the holder is not maintaining or is unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of the holder’s business;
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Item	Provision affected	Amendment
		<p>(c) the holder is failing or has failed to comply with a condition imposed in relation to the licence in accordance with section 10 and the circumstances are such that the Bank considers that the stability and soundness of the holder are or will be affected by the failure; 5 10</p> <p>(d) the holder is conducting business in such a manner as to jeopardise and prejudice the security of deposits taken by it or the rights and interests of persons who made those deposits; 15</p> <p>(e) the holder and one or more than one other entities are under common control (whether or not any such other entity holds a licence) and the Bank is of the opinion that the common control is not in the interest of persons who keep deposits with the holder; 20 25</p> <p>‘specified’, in relation to a direction given under this section, means specified in the direction.</p> <p>(2) On becoming satisfied that it would be in the public interest to do so, or that a prescribed circumstance exists in relation to the holder of a licence, the Bank may, by direction given in writing, require the holder to suspend, for a specified period not exceeding 6 months, any specified banking activity except as authorised by the Bank. 30 35</p> <p>(3) A direction given under subsection (2) ceases to have effect— 40</p> <p>(a) at the end of the period specified in the direction, or</p> <p>(b) if, on the hearing of an appeal to the Irish Financial Services Appeals Tribunal under Part VIIA of the Central Bank Act 1942, that Tribunal has extended the period of operation of the direction, at the end of that extended period, or 45 50</p> <p>(c) on the making of a winding up order in respect of the holder of the licence concerned,</p> <p>whichever first occurs.</p> <p>(4) While a direction under subsection (2) has effect— 55</p> <p>(a) winding up or bankruptcy proceedings may be commenced in relation to the holder of the licence concerned, and 60</p>

Item	Provision affected	Amendment
5		<p>(b) a receiver over the property of that holder may be appointed, and</p> <p>(c) the property of that holder may be attached, sequestered or otherwise distrained,</p> <p>only with the prior approval of the Court.</p>
10 15		<p>(5) If the Bank is satisfied that, despite the fact that the holder of the licence concerned appears to it to be able to meet the obligations that the holder owes to its creditors, the circumstances that gave rise to the direction are unlikely to be rectified, it may, by further direction, require the holder—</p>
20		<p>(a) to prepare, in consultation with the Bank, a scheme for the orderly termination of his banking business and the discharge of the holder's liabilities to persons who have deposits maintained with the holder under the supervision of the Bank, and</p>
25		<p>(b) to submit the scheme to the Bank for its approval within 2 months after the giving of the further direction.</p>
30		<p>(6) The Bank may approve or refuse to approve a scheme submitted to it under subsection (5). In approving such a scheme, the Bank may impose such conditions as it considers appropriate.</p>
35		<p>(7) If the holder of the licence to whom a direction has been given under this section—</p>
40		<p>(a) fails to comply with the direction, or</p>
45		<p>(b) fails to comply with the terms of a scheme approved by the Bank under subsection (6),</p>
50		<p>the Court may, on the application of the Bank, make such order as the Court considers appropriate, including an order of committal or a winding up order on the ground that it is just and equitable that the holder should be wound up.</p>
55		<p>(8) If a winding up order is made in proceedings brought under this section against the holder of a licence to whom a direction has been given under this section, the Companies Acts apply to the holder in the same way as if the order had been made on a winding up petition under those Acts and as if for any reference in that law to the presentation of the winding up petition there were substituted a reference to the making of the winding up order under this section.</p>

Item	Provision affected	Amendment
		<p>(9) The Bank may, by notice in writing given to the holder of the licence concerned, vary or revoke a direction given under this section. However, the Bank may not vary a direction given under subsection (2) by extending the operation of the direction for a period exceeding 12 months from the date on which the direction first took effect.</p> <p>(10) A direction given by the Bank under this section, and any variation of the direction under subsection (9), are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p>(11) For the purpose of paragraph (e) of the definition of 'prescribed circumstance' in subsection (1), the holder of a licence and one or more than one other entities are taken to be under common control if the decision as to how or by whom each are managed can be made by the same person or by the same group of persons acting in concert."</p>

PART 2

AMENDMENT OF INSURANCE ACT 1989

Item	Provision affected	Amendment
1.	Section 18	<p>Substitute the following subsections for subsections (5) to (9):</p> <p>“(5) A direction under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p>(6) The Bank may from time to time vary or revoke a direction given under this section.”</p>
2.	Section 31	Repeal subsections (2), (4), (5) and (7).
3.	Section 58	<p>Substitute the following subsection for subsections (6) and (7):</p> <p>“(6) A decision of the Bank revoking or suspending an authorisation is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”</p>

PART 3

AMENDMENT OF BUILDING SOCIETIES ACT 1989

Item	Provision affected	Amendment
5 10 15 20	1. Section 10	<p data-bbox="358 243 870 268">Substitute the following subsections for subsection (4):</p> <p data-bbox="399 296 898 411">“(4) If the Central Bank decides to refuse to register a memorandum and rules, it shall, within 6 months after the relevant date, notify the signatories of the memorandum and the rules of its decision and of its reasons for it. The relevant date is—</p> <p data-bbox="444 436 898 480">(a) the date of delivery of the rules and memorandum, or</p> <p data-bbox="444 506 898 600">(b) the date of receipt of such other information as the Central Bank requires for the purpose of deciding whether or not to register the rules and memorandum,</p> <p data-bbox="399 625 607 651">whichever is the later.</p> <p data-bbox="399 676 898 835">(4A) A refusal to register a memorandum and rules is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942. However, the Irish Financial Services Appeals Tribunal may hear and determine an appeal against such a refusal only if made by at least 10 signatories of the memorandum and rules.”.</p>
25 30	2. Section 14	<p data-bbox="358 863 862 888">Substitute the following subsection for subsection (5):</p> <p data-bbox="399 915 898 1075">“(5) If the Central Bank refuses to register under subsection (3) a copy of an alteration delivered to it under subsection (2), it shall, within 2 months of the receipt by it of the copies, notify the society of its decision and of its reasons for it. Such a refusal is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
35 40 45	3. Section 40	<p data-bbox="358 1104 837 1129">Insert the following subsection after subsection (6):</p> <p data-bbox="399 1157 898 1222">“(7) The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p data-bbox="444 1247 898 1318">(a) a decision of the Central Bank revoking a society’s authorisation otherwise than at the request of the society;</p> <p data-bbox="444 1344 898 1392">(b) a decision of the Central Bank directing a society to suspend for a specified period—</p> <p data-bbox="506 1417 753 1442">(i) the raising of funds, or</p> <p data-bbox="506 1467 797 1493">(ii) the making of payments, or</p> <p data-bbox="496 1518 898 1560">(iii) the acquisition or disposal of other assets or liabilities.”.</p>

Item	Provision affected	Amendment	
4.	Section 110	<p>(a) Substitute the following subsection for subsection (5):</p> <p style="padding-left: 40px;">“(5) The cancellation of the registration of a society under subsection (2) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p> <p>(b) Substitute the following subsection for subsection (6):</p> <p style="padding-left: 40px;">“(6) A society ceases to be a building society within the meaning of this Act if the registration of the society is cancelled under subsection (2) or (3). This subsection is subject to any decision arising from an appeal against the decision under Part VIIA of the Central Bank Act 1942.”.</p>	5 10 15
5.	Fourth Schedule	<p>In paragraph 1, substitute the following subparagraph for subparagraph (3):</p> <p style="padding-left: 40px;">“(3) The Central Bank shall, before deciding whether or not to revoke the authorisation, consider any representations made to it under subparagraph (1) or (2) in relation to the proposed revocation and shall serve on the society and on every officer a notice stating its decision and the grounds for it.”.</p>	20 25
6.	Fifth Schedule	Repeal the Schedule.	

PART 4

AMENDMENT OF STOCK EXCHANGE ACT 1995

Item	Provision affected	Amendment	
1.	Section 10	<p>Substitute the following subsection for subsections (3) and (4):</p> <p style="padding-left: 40px;">“(3) A direction given under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	30 35
2.	Section 11	<p>Substitute the following subsection for subsection (3):</p> <p style="padding-left: 40px;">“(3) The imposition of a condition or requirement under subsection (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	40
3.	Section 14	<p>Substitute the following section for section 14:</p> <p style="padding-left: 40px;">“Bank may revoke approval of stock exchange. 14.—(1) The Bank may revoke the approval of an approved stock exchange on a request made to it by or on behalf of the exchange.”.</p>	45

Item	Provision affected	Amendment
5		(2) The Bank may also revoke the approval of an approved stock exchange on any of the following grounds:
10		(a) that the exchange has failed to operate as an approved stock exchange within 12 months of the date on which the approval was granted;
15		(b) that the exchange has failed to operate as an approved stock exchange for a period of more than 6 months;
20		(c) that the exchange is being wound up;
25		(d) that it is expedient to revoke the approval in the interest of the proper and orderly regulation of approved stock exchanges or in order to protect investors;
30		(e) that the exchange has been convicted on indictment of an offence under this Act or any other designated enactment or designated statutory instrument, or an offence involving fraud, dishonesty or breach of trust;
35		(f) that circumstances have materially changed since the granting of approval to the exchange such that, if an application for approval was made at the relevant time, a different decision would be taken in relation to the application for approval;
40		(g) that the approval was obtained by providing statements or information known by the applicant for approval to be false or misleading;
45		(h) that the exchange no longer complies with capital or other financial requirements, specified by the Bank from time to time;
50		(i) that the exchange is not maintaining or is unlikely to be able to maintain adequate capital or other financial resources having regard to the volume and nature of its business;
55		(j) that the exchange has become unable or is, in the opinion of the Bank, likely to become unable to meet its obligations to its creditors;
60		(k) that the exchange has failed to comply to a material degree with a requirement of this Act;

Item	Provision affected	Amendment	
		(l) that the exchange has failed to comply with a condition or requirement that was imposed when approval was granted or was imposed later;	5
		(m) that the exchange has suspended payments lawfully due;	
		(n) that the Bank considers that any director, manager or qualifying shareholder of the exchange no longer complies with the conditions of competence and probity required by section 9;	10 15
		(o) that the exchange has so organised itself that it, and any related undertaking or associated undertaking, either collectively or individually, is no longer capable of being regulated to the satisfaction of the Bank under this Act.	20
		(3) The Bank may not revoke the approval of a stock exchange unless it has served notice on the exchange of its proposal to revoke the approval. The notice must include a statement of the Bank's reasons for proposing to revoke the approval.	25 30
		(4) If the approval of a stock exchange is revoked and the exchange is not a company that is being wound up, the following provisions apply:	
		(a) the exchange and its members continue to have the obligations imposed by this Act until all of its liabilities and other obligations have been discharged to the satisfaction of the Bank;	35 40
		(b) the exchange shall, as soon as possible after the revocation, notify the Bank, the members of the exchange and such other persons as the Bank specifies of the measures being taken to discharge without delay the liabilities and other obligations of the exchange.	45
		(5) If—	50
		(a) a former approved stock exchange has not notified the Bank in accordance with paragraph (b) of subsection (4), or	
		(b) a former approved stock exchange has notified the Bank in accordance with that paragraph but the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or	55 60

Item	Provision affected	Amendment
5 10 15 20 25 30 35 40 45 50		<p data-bbox="537 153 894 344">(c) a former approved stock exchange has notified the Bank in accordance with that paragraph but the Bank is of the opinion that the exchange has failed to take all reasonable steps to notify persons specified by the Bank under that paragraph,</p> <p data-bbox="496 369 894 506">the Bank may, by direction given in writing, prohibit the exchange from doing all or any of the following without the prior authorisation of the Bank for such period, not exceeding six months, as is specified in the notice:</p> <ul style="list-style-type: none"> <li data-bbox="537 533 743 558">(i) creating liabilities; <li data-bbox="537 583 894 674">(ii) dealing with, or disposing of, assets or specified assets of the exchange, or of members of the exchange, in any manner; <li data-bbox="537 699 894 768">(iii) engaging in any kind of transaction, or in any specified transaction or class of transactions; <li data-bbox="537 793 873 819">(iv) making payments to any person. <p data-bbox="496 844 894 1035">(6) If the Bank has given a direction under subsection (5), the Bank may further direct the former approved stock exchange to prepare and submit to the Bank for its approval, within 2 months of the earlier direction, a scheme for the orderly discharge of the liabilities and other obligations of the exchange.</p> <p data-bbox="496 1060 894 1272">(7) A former approved stock exchange to which a direction has been given under this section shall comply with the direction. Each person who, immediately before the approval of the stock exchange was revoked, was concerned in the management of the exchange, shall ensure that the former approved stock exchange complies with the direction.</p> <p data-bbox="496 1297 894 1388">(8) If the approval of an approved stock exchange is revoked and the exchange is a company that is being wound up, the following provisions apply:</p> <ul style="list-style-type: none"> <li data-bbox="537 1413 894 1604">(a) the liquidator of the exchange has, in addition to the liquidator's obligations in respect of the winding up, the same obligations as the exchange would have had if it were a former approved stock exchange to which subsection (4) applies;

Item	Provision affected	Amendment
		<p>(b) despite paragraph (a) of this subsection, the Bank may, by notice in writing given to the exchange, discharge the liquidator from complying with the obligations imposed by paragraph (b) of subsection (4) and impose on the liquidator such other obligations corresponding to those set out in that paragraph as the Bank considers appropriate. 5 10</p> <p>(9) Nothing in subsection (8) affects an obligation under this Act of any of the members of the former approved stock exchange concerned. 15</p> <p>(10) Within 28 days after revoking the approval of an approved stock exchange under this section, the Bank shall publish a notice of the revocation in <i>Iris Oifigiúil</i> and in at least one newspaper that circulates within the State. 20</p> <p>(11) A stock exchange whose approval is revoked under this section shall cease to operate as an approved stock exchange from the date on which it is notified of the revocation. 25</p> <p>(12) A person shall not, without the consent of the Bank, provide an investment service on premises knowing that the premises were formerly used as a stock exchange by a stock exchange whose approval has been revoked. 30 35</p> <p>(13) The revocation of an approval by the Bank and the giving of a direction under this section are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942. 40</p> <p>(14) The Bank may not exercise its power under subsection (2)(n) in respect of an approved stock exchange unless it has given the exchange an opportunity to remove the director or manager from office or otherwise deal with the concerns of the Bank in relation to the probity or competence of the person within such period as the Bank specifies. 45</p> <p>(15) A person who fails to comply with subsection (7) or (11) or contravenes subsection (12) commits an offence.”. 50</p>
4.	Section 18	<p>Substitute the following subsections for subsection (3):</p> <p>“(3) The Bank shall not refuse an application for an authorisation unless it has served on the applicant a notice of its intention to refuse the application. The notice must include a statement of the grounds on which it is proposed to refuse the application. 55</p> <p>(3A) The refusal by the Bank to grant an authorisation to a proposed member firm under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”. 60</p>

Item	Provision affected	Amendment
5 10	Section 20	<p>Substitute the following subsections for subsection (3):</p> <p>“(3) If the Bank does not communicate the information as required by subsection (2), it shall give reasons for the refusal to the authorised member firm concerned.</p> <p>(3A) A failure or refusal by the Bank to comply with subsection (2) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
15	Section 21	<p>Substitute the following subsection for subsections (3) and (4):</p> <p>“(3) The imposition by the Bank of a condition or requirement under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
20	Section 22	<p>Substitute the following subsection for subsection (3):</p> <p>“(3) The imposition by the Bank of a condition or requirement under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
25 30 35	Section 23	<p>Substitute the following subsections for subsection (2):</p> <p>“(2) If the Bank refuses to consent to an amendment of or addition to the memorandum of association or articles of association of an authorised member firm, it shall serve a notice on the firm stating that it refuses to consent to the amendment or addition. The notice must include a statement of the reasons for the refusal.</p> <p>(3) The refusal of the Bank to consent to an amendment or addition to the memorandum of association or articles of association of an authorised member firm is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
40 45 50 55	Section 24	<p>Substitute the following section for section 24:</p> <p>“Bank may revoke authorisation of member firm.</p> <p>24.—(1) The Bank may revoke the authorisation of an authorised member firm on a request made to it by or on behalf of the firm.</p> <p>(2) The Bank may also revoke the authorisation of an authorised member firm on any of the following grounds:</p> <p>(a) that the firm has failed to operate as an authorised member firm within 12 months of the date on which the authorisation was granted;</p> <p>(b) that the firm has failed to operate as an authorised member firm for a period of more than 6 months;</p> <p>(c) that the firm is being wound up;</p> <p>(d) that it is expedient to revoke the authorisation in the interest of the proper and orderly regulation of authorised member firms or in order to protect investors;</p>

Item	Provision affected	Amendment
		<p>(e) that the firm has been convicted on indictment of an offence under this Act or any other designated enactment or designated statutory instrument, or an offence involving fraud, dishonesty or breach of trust; 5</p> <p>(f) that circumstances have materially changed since the granting of authorisation to the firm such that, if an application for authorisation was made at the relevant time, a different decision would be taken in relation to the application for authorisation; 10 15</p> <p>(g) that the authorisation was obtained by providing statements or information known by the applicant for authorisation to be false or misleading; 20</p> <p>(h) that the firm no longer complies with capital or other financial requirements, specified by the Bank from time to time; 25</p> <p>(i) that the firm is not maintaining or is unlikely to be able to maintain adequate capital or other financial resources having regard to the volume and nature of its business; 30</p> <p>(j) that the firm has become unable or is, in the opinion of the Bank, likely to become unable to meet its obligations to its creditors; 35</p> <p>(k) that the firm is failing or has failed to comply to a material degree with a condition or requirement imposed by or under this Act; 40</p> <p>(l) that the firm has suspended payments lawfully due;</p> <p>(m) that the Bank considers that any director, manager or qualifying shareholder of the firm no longer complies with the conditions of competence and probity required by section 18; 45</p> <p>(n) the firm has so organised itself that it, and any related undertaking or associated undertaking, either collectively or individually, is no longer capable of being regulated to the satisfaction of the Bank under this Act. 50 55</p>

Item	Provision affected	Amendment
5		<p>(3) The Bank may not revoke the authorisation of a member firm unless it has served notice on the firm of its proposal to revoke the authorisation. The notice must include a statement of the Bank's reasons for proposing to revoke the authorisation.</p>
10		<p>(4) If a member firm's authorisation is revoked, the firm and every person who was concerned in the management of the firm immediately before the revocation are jointly and severally responsible for ensuring the discharge of all undischarged contracts entered into by the firm before the authorisation was revoked, unless the Bank gives a direction in writing to the contrary.</p>
15		<p>(5) If the authorisation of a member firm is revoked and the firm is not insolvent, the following provisions apply:</p>
20		<p>(a) the firm and its members continue to have the obligations imposed by or under this Act, or by the rules of the approved stock exchange concerned, until all of its liabilities and other obligations have been discharged to the satisfaction of the Bank;</p>
25		<p>(b) the firm shall, as soon as possible after the revocation, notify the Bank, the members of the firm and such other persons as the Bank specifies of the measures being taken to discharge without delay the liabilities and other obligations of the firm.</p>
30		<p>(6) If—</p>
35		<p>(a) a former authorised member firm has not so notified the Bank in accordance with paragraph (b) of subsection (5), or</p>
40		<p>(b) a former authorised member firm has notified the Bank in accordance with that paragraph but the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or</p>
45		<p>(c) a former authorised member firm has notified the Bank in accordance with that paragraph but the Bank is of the opinion that the firm has failed to take all reasonable steps to notify persons specified by the Bank under that paragraph,</p>
50		<p>the Bank may, by direction given in writing, prohibit the firm from doing all or any of the following without the prior authorisation of the Bank for such period, not exceeding six months, as is specified in the notice:</p> <p>(i) creating liabilities;</p>
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Item	Provision affected	Amendment	
		(ii) dealing with, or disposing of, assets or specified assets of the firm, or of members of the firm, in any manner;	5
		(iii) engaging in any kind of transaction, or in any specified transaction or class of transactions;	10
		(iv) making payments to any person.	
		(7) If the Bank has given a direction under subsection (6), the Bank may further direct the former authorised member firm to prepare and submit to the Bank for its authorisation, within 2 months of the earlier direction, a scheme for the orderly discharge of the liabilities and other obligations of the firm.	15 20
		(8) A former authorised member firm to which a direction has been given under this section shall comply with the direction. If the firm is a body (whether incorporate or unincorporated), each person who, immediately before the authorisation of the member firm was revoked, was concerned in the management of the firm, shall ensure that the former authorised member firm complies with the direction.	25 30
		(9) If the authorisation of an authorised member firm is revoked and the firm is insolvent, the following provisions apply:	
		(a) a liquidator or receiver of the firm has, in addition to the obligations the liquidator or receiver has in respect of the winding up, the same obligations as the firm would have had if it were a former authorised member firm to which subsection (5) of this section applies;	35 40
		(b) despite paragraph (a) of this subsection, the Bank may, by notice in writing given to the firm, discharge the liquidator or receiver from complying with the obligations imposed by paragraph (b) of subsection (5) and impose on the liquidator or receiver such other obligations corresponding to those set out in that paragraph as the Bank considers appropriate.	45 50 55
		(10) Nothing in subsection (9) affects any obligation under this Act of any of the members of the former authorised member firm concerned.	
		(11) Within 28 days after revoking the authorisation of an authorised member firm under this section, the Bank shall publish a notice of the revocation in <i>Iris Oifigiúil</i> and in at least one daily newspaper that circulates within the State.	60 65

Item	Provision affected	Amendment
12.	Section 37	<p data-bbox="516 151 950 178">Substitute the following section for section 37:</p> <p data-bbox="516 199 1104 388">“Bank may disqualify officers and employees of stock exchanges and member firms in certain circumstances. 37.—(1) On becoming aware that the probity of a person who is an officer or employee of an approved stock exchange or authorised member firm is such so as to render the person unsuitable to be an officer or employee of an approved stock exchange or authorised member firm, the Bank may, by notice in writing given to the person and to the exchange or firm, direct the exchange or firm to remove the person from office or to dismiss the person from its employment. 5 10 15</p> <p data-bbox="657 514 1104 766">(2) If the Bank becomes aware that a person who is an officer or employee of an approved stock exchange or authorised member firm is not competent in respect of matters of the kind with which the person would be concerned as an officer or employee of an approved stock exchange or an authorised member firm, the Bank may, by notice in writing given to the person and to the exchange or firm, direct the exchange or firm— 20 25</p> <p data-bbox="698 787 1104 892">(a) in the case of an officer, to remove the person from office or to suspend the person from office for a specified period, or 30</p> <p data-bbox="698 913 1104 1039">(b) in the case of an employee, to dismiss the person from its employment or to remove the person from a particular sector of employment. 35</p> <p data-bbox="657 1060 1104 1249">(3) An approved stock exchange, an authorised member firm or any other entity that the Bank supervises or regulates as part of its statutory functions shall not, without the written consent of the Bank, employ in any capacity a person knowing that the person is the subject of a direction given under this section. 40</p> <p data-bbox="657 1270 1104 1312">(4) A direction under this section must specify the date on which it is to take effect. 45</p> <p data-bbox="657 1333 1104 1428">(5) The Bank may consent to the employment of a person who is the subject of a direction given under this section. The consent may—</p> <p data-bbox="698 1449 1104 1585">(a) relate to employment with any entity that the Bank supervises or regulates as part of its statutory functions generally or to employment of a particular kind, and 50 55</p> <p data-bbox="698 1606 1104 1648">(b) be given subject to conditions or requirements or both, and</p> <p data-bbox="698 1669 1104 1711">(c) be varied by the Bank from time to time.</p> <p data-bbox="657 1732 1104 1827">(6) Any person who accepts or continues in employment in contravention of a direction given under this section commits an offence. 60</p>

Item	Provision affected	Amendment
5 10		<p>(7) A direction given by the Bank under this section and the refusal of the Bank to give consent under subsection (5) are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p>(8) The Bank may, by notice in writing given to the person concerned, revoke or vary a direction given under this section.”.</p>
13. 15	Section 46	<p>Substitute the following section for section 46:</p> <p>“Decision of Bank with respect to acquiring transactions under section 40 to be appealable. 46.—(1) The refusal of the Bank to approve an acquiring transaction in accordance with section 40 and the imposition of conditions or requirements on approving such a transaction are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
14. 20	Section 70	<p>In subsection (1)—</p> <p>(a) substitute “14(15)” for “14(8)”, and</p> <p>(b) substitute “24(16)” for “24(9)”, and</p> <p>(c) substitute “37(3) and (6)” for “37(7)”.</p>
15. 25 30 35 40 45	First Schedule	<p>Substitute the following Schedule for the First Schedule:</p> <p style="text-align: center;">“FIRST SCHEDULE Section 29.</p> <p style="text-align: center;">SUPPLEMENTARY PROVISIONS IN RELATION TO A DIRECTION BY THE BANK UNDER SECTION 29</p> <p>Interpretation: 1. In this Schedule— First Schedule. ‘direction’ means a direction given by the Bank under section 29 of this Act;</p> <p>‘stock exchange’ includes—</p> <p>(a) a proposed stock exchange, and</p> <p>(b) an approved stock exchange, and</p> <p>(c) a former approved stock exchange, and</p> <p>(d) directors and those responsible for the management of an approved stock exchange or former approved stock exchange;</p> <p>‘member firm’ includes—</p> <p>(a) a proposed member firm, and</p> <p>(b) an authorised member firm, and</p> <p>(c) a former authorised member firm, and</p> <p>(d) directors and those responsible for the management of an authorised member firm or former authorised member firm.</p>

Item	Provision affected	Amendment
		<p>Bank may revoke direction. 2. The Bank may revoke a direction unless the Irish Financial Services Appeals Tribunal has made an order in respect of the direction on the hearing of an appeal against the direction under Part VIIA of the Central Bank Act 1942. 5</p>
		<p>Effect of direction confirmed by Irish Financial Services Appeals Tribunal on appeal. 3. (1) A direction confirmed by the Irish Financial Services Appeals Tribunal on the determination of an appeal made by a stock exchange terminates— 10</p> <p>(a) at the end of the period of operation specified by that Tribunal, or 15</p> <p>(b) on that Tribunal making an order for quashing the direction, or</p> <p>(c) on the making of a winding-up order in respect of the stock exchange, or 20</p> <p>(d) on the making by that Tribunal of an order for termination where it considers that the circumstances that gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make the order, 25</p> <p>whichever first occurs.</p> <p>(2) A direction confirmed by the Irish Financial Services Appeals Tribunal on the determination of an appeal made by a member firm terminates— 30</p> <p>(a) at the end of the period of operation specified by that Tribunal, or 35</p> <p>(b) on that Tribunal making an order for quashing the direction, or</p> <p>(c) if— 40</p> <p>(i) the firm is a company, on the making of a winding-up order in respect of the firm, or</p> <p>(ii) if the firm is an unincorporated body, on the making of a dissolution order in respect of the firm, 45</p> <p>(d) on the making by that Tribunal of an order for termination where it considers that the circumstances that gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make the order, 50</p> <p>55</p> <p>whichever first occurs.</p>

Item	Provision affected	Amendment
5		<p>4. If the Bank considers that the stock exchange or member firm to which the direction was given is able to meet its obligations to its creditors, investors or clients but the circumstances that gave rise to the direction are unlikely to be rectified, it may, by notice in writing, direct the firm—</p>
10		<p>(a) to prepare, in consultation with the Bank, a scheme for the orderly termination of its business and the discharge of its liabilities to its creditors, investors and clients under the supervision of the Bank, and</p>
15		<p>(b) to submit the scheme to the Bank for approval within 2 months after the giving of the notice.</p>
20	<p>Bank may direct stock exchange or member firm to prepare scheme for termination of its business.</p>	<p>5. A direction given by the Bank under this Schedule is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.</p>
25	<p>Stock Exchange or member firm may appeal against direction of Bank.</p>	<p>6. (1) If a stock exchange or a member firm—</p>
30	<p>Consequences of failing to comply with direction of Bank.</p>	<p>(a) fails to comply with a direction given by the Bank under this Schedule, or</p> <p>(b) fails to comply with the terms of a scheme prepared and submitted by the firm and approved by the authority,</p> <p>the Bank may apply to the Court for an order under subparagraph (2).</p>
35		<p>(2) On the hearing of an application made under subparagraph (1), the Court may make—</p>
40		<p>(a) in the case of a stock exchange, an order for the winding up of the exchange on the ground that it is just and equitable that it should be wound up, or</p>
45		<p>(b) in the case of a member firm that is a company, an order for the winding up of the firm on the ground that it is just and equitable that it should be wound up, or</p>
50		<p>(c) in the case of a member firm that is an unincorporated body, an order for the dissolution of the firm on the grounds that it is just and equitable that the firm should be dissolved.</p>
55	<p>Bank may revoke or amend direction.</p>	<p>7. The Bank may, by notice in writing given to the stock exchange or member firm concerned, revoke or vary a requirement imposed by it under this Schedule.</p>

Item	Provision affected	Amendment	
	Obligation of stock exchange or member firm when given a direction under section 29.	<p>8. (1) On being given a direction—</p> <p>(a) the stock exchange or member firm concerned shall take all necessary steps to ensure that its assets, or its client or investor assets wherever held, are not depleted without the prior authorisation of the Bank, and</p> <p>(b) the Bank may direct—</p> <p>(i) a credit institution or any institution exempted under section 7 of the Central Bank Act 1971, or</p> <p>(ii) any other financial institution that holds an account of any description of the firm (including holdings of investment instruments of the firm to which the direction has been given),</p> <p>to cease making payments from, or entering into other transactions in respect of, the account without the prior authorisation of the Bank.</p> <p>(2) An institution to which a direction is given under subparagraph (1)(b) shall comply with the direction within such period as is specified in the direction.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>

PART 5

AMENDMENT OF INVESTMENT INTERMEDIARIES ACT 1995

Item	Provision affected	Amendment	
1.	Section 10	<p>Substitute the following subsections for subsection (3):</p> <p>“(3) If a supervisory authority refuses to grant authorisation to a proposed investment business firm under this section, it shall serve notice on the proposed investment business firm of its intention to refuse to authorise it. The notice must include a statement setting out the reasons for the refusal.</p> <p>(3A) A decision of a supervisory authority refusing to grant authorisation to a proposed investment business firm under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	<p>35</p> <p>40</p> <p>45</p>

Item	Provision affected	Amendment
2.	Section 12	<p>Substitute the following subsections for subsection (3):</p> <p>“(3) If the supervisory authority acting as a competent authority fails or refuses to communicate the information in the manner referred to in subsection (2), it shall give reasons for the failure or refusal to the authorised investment business.</p> <p>(3A) A failure or refusal of a supervisory authority to communicate the information in the manner referred to in subsection (2) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
3.	Section 13	<p>Substitute the following subsection for subsections (3) and (4):</p> <p>“(3) A decision of the supervisory authority imposing a condition or requirement under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
4.	Section 13A (as inserted by section 17 of the Insurance Act 2000)	<p>Substitute the following subsection for subsections (3) and (4):</p> <p>“(3) A decision of the supervisory authority imposing a condition or requirement under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
5.	Section 14	<p>Substitute the following subsection for subsection (3):</p> <p>“(3) A decision of the supervisory authority imposing a condition or requirement under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
6.	Section 15	<p>Substitute the following subsections for subsection (2):</p> <p>“(2) If a supervisory authority refuses to consent to an amendment of or addition to the memorandum of association, or articles of association, of an authorised investment business firm, it shall serve notice on the authorised investment business firm concerned stating that it refuses to consent to the amendment or addition. The notice must set out the reasons for the refusal.</p> <p>(3) A refusal by the supervisory authority to consent to an amendment of or addition to the memorandum of association, or articles of association, of an authorised investment business firm is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
7.	Section 16	<p>Substitute the following section for section 16:</p> <p>“Supervisory authority may revoke authorisation in certain circumstances.</p> <p>16.—(1) A supervisory authority may revoke the authorisation of an authorised investment business firm on a request being made to it by or on behalf of the firm.</p> <p>(2) A supervisory authority may also revoke the authorisation of an authorised investment business firm on the following grounds:</p> <p>(a) that the firm has failed to operate as an investment business firm within 12 months of the date on which it was authorised under this Act;</p>

Item	Provision affected	Amendment	
		(b) that the firm has failed to operate as an investment business firm for a period of more than six months;	5
		(c) that the firm is being wound up;	
		(d) that it is expedient to do so in the interests of the proper and orderly regulation and supervision of investment business firms or in order to protect investors or in any or all of these circumstances;	10
		(e) that the firm has been convicted on indictment of an offence under this Act or any other designated enactment or designated statutory instrument, or any offence involving fraud, dishonesty or breach of trust;	15
		(f) that circumstances have materially changed since the granting of the authorisation such that, if an application for authorisation were made at the relevant time, it is likely that the supervisory authority would have made a different decision with respect to the application for authorisation;	20
		(g) that the authorisation was obtained by making statements, or providing information, that the applicant for authorisation knew or ought to have known were false or misleading;	25
		(h) that the firm has systematically failed to comply with a condition or requirement of this Act, or has failed to comply to a material degree with a condition or requirement of this Act;	30
		(i) that the firm no longer fulfils conditions or requirements that were imposed either when the firm's authorisation was granted or at a later time;	35
		(j) that the firm no longer complies with capital or any other financial requirements specified by the supervisory authority from time to time;	40
		(k) that the firm is not maintaining, or is unlikely to be able to maintain, adequate capital resources or other financial resources having regard to the nature and volume of its business;	45
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Item	Provision affected	Amendment
5		<p>(l) that the firm has become unable or, in the opinion of the supervisory authority, is likely to become unable, to meet its obligations to its creditors;</p>
10		<p>(m) that the firm has suspended payments lawfully due;</p>
15		<p>(n) that the firm has contravened to a material degree a code of conduct or rules of conduct specified in or set out under section 37;</p>
20		<p>(o) that a director, manager or qualifying shareholder of a person who is an authorised investment business firm, or is deemed by section 26 or 63 to be such a firm, no longer satisfies the supervisory authority as to the matters specified in paragraphs (d) and (e) of section 10(5);</p>
25		<p>(p) that the firm has failed to comply with a condition, requirement or direction imposed under this Act and the supervisory authority is of the opinion that the stability and soundness of the firm is or has been materially affected by the failure;</p>
35		<p>(q) that the firm has so organised its business or corporate structure that it and, where appropriate, any related undertaking or associated undertaking, either collectively or individually, are no longer capable of being regulated under this Act to the satisfaction of the supervisory authority.</p>
45		<p>(3) The supervisory authority may not revoke the authorisation of an authorised investment business firm under subsection (2) unless it has served a notice on the firm of its intention to do so. The notice must set out the grounds on which it is proposed to revoke the authorisation.</p>
55		<p>(4) If an investment firm's authorisation is revoked, the firm and every person who was concerned in the management of the firm immediately before the revocation are jointly and severally responsible for ensuring the discharge of all undischarged contracts entered into by the firm before the authorisation was revoked, unless the Bank gives a direction in writing to the contrary.</p>

Item	Provision affected	Amendment
		<p>(5) If the authorisation of an authorised investment business firm is revoked and the firm is not insolvent, the following provisions apply: 5</p> <p>(a) the firm continues to be subject to the obligations imposed by this Act and any codes of conduct or rules of conduct or client money requirements or any other conditions or requirements imposed by the supervisory authority under this Act until all the liabilities and other obligations of the firm have been discharged to the satisfaction of that authority; 10 15</p> <p>(b) as soon as practicable after the revocation, the firm shall notify the supervisory authority and such other persons (if any) as that authority specifies of the measures being taken to discharge without delay the liabilities and other obligations of the firm. 20 25</p> <p>(6) If the authorisation of an authorised investment business firm is revoked and the firm is not insolvent and— 30</p> <p>(a) the firm has not notified the supervisory authority in accordance with paragraph (b) of subsection (5), or 35</p> <p>(b) the firm has notified the supervisory authority in accordance with that paragraph but that authority is of the opinion that the measures being taken or proposed to be taken for the purposes of this section are unsatisfactory, or 40</p> <p>(c) the firm has notified the supervisory authority in accordance with that paragraph but that authority is of the opinion that the firm has failed to take all reasonable steps to notify persons that that authority has specified in accordance with that paragraph, 45 50</p> <p>that authority may, by direction given in writing, prohibit the firm from doing all or any of the following without the prior authorisation of that authority for such period, not exceeding 6 months, as is specified in the direction: 55</p>

Item	Provision affected	Amendment
5		(i) creating liabilities;
10		(ii) dealing with, or disposing of, assets or specified assets of the firm in any manner;
15		(iii) engaging in any kind of transaction or any specified transaction or class of transaction;
20		(iv) paying money to any person or to any specified person or class of persons.
25		(7) If the supervisory authority has given a direction under subsection (6), it may further direct the former authorised investment business firm to prepare and submit to that authority for its approval, within 2 months of the earlier direction, a scheme for the orderly discharge of the liabilities and other obligations of the firm.
30		(8) A former authorised investment business firm to which a direction has been given under this section shall comply with the direction. If the firm is a body (whether incorporate or unincorporated), each person who, immediately before the authorisation of the member firm was revoked, was concerned in the management of the firm, shall ensure that the former authorised investment business firm complies with the direction.
35		(9) If the authorisation of an investment business firm is revoked and the firm is insolvent, the following provisions apply:
40		(a) the liquidator, official assignee or receiver of the firm has, in addition to any other obligations in respect of the winding-up, dissolution or bankruptcy, the same obligations as those that the firm would have if it were an authorised investment business firm to which subsection (5) applies;
45		(b) the liquidator, official assignee or receiver are also subject to any conditions or requirements imposed under this Act as if the liquidator, official assignee or receiver were an authorised investment business firm, and
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Item	Provision affected	Amendment
		<p>(c) despite paragraph (a) of this subsection, the supervisory authority may, by notice in writing given to the body, discharge the liquidator, receiver or official assignee from complying with the obligations imposed by paragraph (b) of subsection (5) and impose on the liquidator, receiver or official assignee such other obligations corresponding to those set out in that paragraph as that authority considers appropriate. 5 10 15</p> <p>(10) Within 28 days after the authorisation of an authorised investment business firm is revoked under this section, the supervisory authority shall publish a notice of the revocation in <i>Iris Oifigiúil</i> and in at least one daily newspaper that circulates within the State. 20</p> <p>(11) After the revocation of the authorisation of an authorised investment business firm, the firm shall cease to operate as such a firm. 25</p> <p>(12) The supervisory authority shall not revoke an authorisation of an authorised investment business firm on the ground set out in subsection (2)(o), unless it has given the firm an opportunity to remove the director, manager or qualifying shareholder, or otherwise deal with the concerns of that authority as regards the probity or competence of the person concerned, within such period as that authority specifies. 30 35</p> <p>(13) For the purposes of this section, an investment business firm is insolvent if— 40</p> <p>(a) being a company, the company is being wound up, or</p> <p>(b) being an unincorporated body of persons, the body is the subject of a dissolution order, or 45</p> <p>(c) being a natural person, the person is adjudicated bankrupt.</p> <p>(14) A person who fails to comply with subsection (8) or (11) commits an offence.”.</p>
8.	Section 21	<p>(a) Substitute the following subsections for subsections (5) and (6): 50</p> <p>“(5) A direction given under this section takes effect on a date specified by the Bank.</p> <p>(6) A direction given under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942. 55</p>

Item	Provision affected	Amendment	
		(b) that the body has failed to operate as an approved professional body for a period of more than 6 months;	5
		(c) that the body is being wound up;	
		(d) that it is expedient to revoke the approval in the interest of the proper and orderly regulation of approved professional bodies or certified persons or in order to protect investors;	10
		(e) that the body has been convicted on indictment of an offence under this Act or any other designated enactment or designated statutory instrument, or an offence involving fraud, dishonesty or breach of trust;	15
		(f) that circumstances have materially changed since the granting of approval to the body such that, if an application for approval was made at the relevant time, a different decision would be taken in relation to the application for approval;	20
		(g) that the approval was obtained by providing statements or information known by the applicant for approval to be false or misleading;	25
		(h) that the body has failed to comply to a material degree with a requirement of this Act;	30
		(i) that the body has failed to comply with a condition or requirement that was imposed when approval was granted or was imposed later;	35
		(j) that the body has become unable or is, in the opinion of the Bank, likely to become unable to meet its obligations to its creditors;	40
		(k) that the body has suspended payments lawfully due;	45
		(l) that the Bank considers that any director or manager of the body who is primarily concerned with the regulation of certified persons no longer complies with the conditions of competence and probity required by section 56;	50
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Item	Provision affected	Amendment
5		<p>(m) that the body has so organised itself that it, and any related undertaking or associated undertaking, either collectively or individually, is no longer capable of being regulated to the satisfaction of the Bank under this Act.</p>
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15		<p>(3) The Bank may not revoke the approval of a professional body unless it has served notice on the body of its proposal to revoke the approval. The notice must include a statement of the Bank's reasons for proposing to revoke the authorisation.</p>
20		<p>(4) If the approval of a professional body is revoked and the body is not a company that is being wound up, the following provisions apply:</p>
25		<p>(a) the body and its members continue to have the obligations imposed by this Act until all of its liabilities and other obligations have been discharged to the satisfaction of the Bank;</p>
30		<p>(b) the body shall, as soon as possible after the revocation, notify the Bank, the members of the body and such other persons as the Bank specifies of the measures being taken to discharge without delay the liabilities and other obligations of the body.</p>
35		<p>(5) If—</p>
40		<p>(a) a former approved professional body has not notified the Bank in accordance with paragraph (b) of subsection (4), or</p>
45		<p>(b) a former approved professional body has notified the Bank in accordance with that paragraph and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or</p>
50		<p>(c) a former approved professional body has notified the Bank in accordance with that paragraph but the Bank is of the opinion that the body has failed to take all reasonable steps to notify persons specified by the Bank under that paragraph,</p>
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Item	Provision affected	Amendment
		<p>the Bank may, by direction given in writing, prohibit the body from doing all or any of the following without the prior authorisation of the Bank for such period, not exceeding six months, as is specified in the notice:</p> <p>(d) creating liabilities;</p> <p>(e) dealing with, or disposing of, assets or specified assets of the body, or of members of the body, in any manner;</p> <p>(f) engaging in any kind of transaction, or in any specified transaction or class of transactions;</p> <p>(g) making payments to any person.</p> <p>(6) If the Bank has given a direction under subsection (5), the Bank may further direct the former approved professional body to prepare and submit to the Bank for its approval, within 2 months of the earlier direction, a scheme for the orderly discharge of the liabilities and other obligations of the body.</p> <p>(7) A former approved professional body shall comply with a direction given to it under this section. Each person who, immediately before the approval of the body was revoked, was concerned in the management of the body, shall ensure that the body complies with the direction.</p> <p>(8) If the approval of an approved professional body is revoked and the body is a company that is being wound up, the following provisions apply:</p> <p>(a) the liquidator of the body has, in addition to the liquidator's obligations in respect of the winding up, the same obligations as the body would have had if it were a former approved professional body to which subsection (4) applies;</p> <p>(b) despite paragraph (a) of this subsection, the Bank may, by notice in writing given to the body, discharge the liquidator from complying with the obligations imposed by paragraph (b) of subsection (4) and impose on the liquidator such other obligations corresponding to those set out in that paragraph as the Bank considers appropriate.</p> <p>(9) Nothing in subsection (8) affects any obligation under this Act of any of the members of the former approved professional body concerned.</p>
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Item	Provision affected	Amendment
5 10 15 20 25		<p>(10) Within 28 days after revoking the approval of a professional body under this section, the Bank shall publish a notice of the revocation in <i>Iris Oifigiúil</i> and in at least one daily newspaper that circulates within the State.</p> <p>(11) A professional body whose approval is revoked under this section shall cease to operate as an approved professional body from the date on which it is notified of the revocation.</p> <p>(12) The revocation of an approval by the Bank and the giving of a direction under this section are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p>(13) The Bank may not exercise its power under subsection (2)(l) in respect of an approved professional body unless it has given the body an opportunity to remove the director or manager from office or otherwise deal with the concerns of the Bank in relation to the probity or competence of the person within such period as the Bank specifies.</p> <p>(14) A person who fails to comply with subsection (7) or (11) commits an offence.”.</p>
30 35 40 45 50	14. First Schedule	<p>Substitute the following Schedule for the first Schedule:</p> <p style="text-align: center;">“FIRST SCHEDULE Section 21.</p> <p style="text-align: center;">SUPPLEMENTARY PROVISIONS IN RELATION TO A DIRECTION BY SUPERVISORY AUTHORITY UNDER SECTION 21 OF THIS ACT</p> <p>Interpretation: First Schedule. 1. In this Schedule—</p> <p>‘direction’ means a direction given by a supervisory authority under section 21 of this Act;</p> <p>‘investment business firm’ includes—</p> <p style="margin-left: 40px;">(a) a proposed investment business firm, and</p> <p style="margin-left: 40px;">(b) an authorised investment business firm, and</p> <p style="margin-left: 40px;">(c) a former authorised investment business firm, and</p> <p style="margin-left: 40px;">(d) a person who the supervisory authority has reasonable grounds to believe is acting as an investment business firm, and</p> <p style="margin-left: 40px;">(e) an associated undertaking or related undertaking, and</p> <p style="margin-left: 40px;">(f) directors and those responsible for managing an investment business firm.</p>

Item	Provision affected	Amendment	
		Supervisory authority may revoke direction.	2. A supervisory authority may revoke a direction unless the Irish Financial Services Appeals Tribunal has made an order in respect of the direction on the hearing of an appeal against the direction under Part VIIA of the Central Bank Act 1942. 5
		Effect of direction confirmed by Irish Financial Services Appeals Tribunal on appeal.	3. A direction confirmed by the Irish Financial Services Appeals Tribunal on the hearing of an appeal against the direction under Part VIIA of the Central Bank Act 1942 terminates— 10
			(a) at the end of the period of operation specified by that Tribunal, or 15
			(b) on that Tribunal making an order for quashing the direction, or
			(c) on the making of—
			(i) if the investment business firm is a company, a winding-up order in respect of the investment business firm, or 20
			(ii) if the firm is an unincorporated body, a dissolution order in respect of the firm, or 25
			(iii) if the firm is a sole trader, an adjudication of bankruptcy in respect of the trader, 30
			(d) on the making by that Tribunal of an order for termination where it considers on the hearing of an appeal against the direction under Part VIIA of the Central Bank Act 1942 that the circumstances that gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make the order, 35
			whichever first occurs. 40
		Supervisory authority may require investment business firm to prepare scheme for termination of its business.	4. If a supervisory authority considers that the investment business firm to which the direction was given is able to meet its obligations to its creditors, investors or clients but the circumstances that gave rise to the direction are unlikely to be rectified, it may, by notice in writing, require the firm— 45
			(a) to prepare, in consultation with the authority, a scheme for the orderly termination of its business and the discharge of its liabilities to its creditors, investors and clients under the supervision of the supervisory authority, and 55

Item	Provision affected	Amendment
5		<p>(b) to submit the scheme to the authority for its approval within 2 months after the giving of the notice.</p>
	Investment business firm may appeal against decision of supervisory authority.	5. A requirement made under paragraph 4 is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.
10	Consequences of failing to comply with direction of supervisory authority.	6. (1) If the investment business firm— (a) fails to comply with a requirement made by the supervisory authority under paragraph 4, or
15		(b) fails to comply with the terms of a scheme prepared and submitted by the firm and approved by the authority,
		the supervisory authority may apply to the Court for an order under subparagraph (2).
20		(2) On the hearing of an application made under subparagraph (1), the Court may make such of the following orders as is appropriate:
25		(a) if the investment business firm is a company, an order for the winding-up of the company on the grounds that it is just and equitable that the company should be wound up;
30		(b) if the investment business firm is an unincorporated body, an order for the dissolution of the firm on the grounds that it is just and equitable that the firm should be dissolved;
35		(c) if the investment business firm is a sole trader, an order that proceedings in bankruptcy be commenced, on the grounds that it is just and equitable that the trader should cease trading.
40	Supervisory authority may revoke or amend direction.	7. The supervisory authority may at any time revoke or amend a requirement made by it under paragraph 4.
45	Obligations of investment business firm when given a direction under this Schedule.	8. (1) On being given a direction— (a) the investment business firm concerned shall take all necessary steps to ensure that its assets, or its client or investor assets wherever held, are not depleted without the prior authorisation of the supervisory authority, and
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Item	Provision affected	Amendment
		<p>(b) the supervisory authority may direct—</p> <p>(i) a credit institution or any institution exempted under section 7 of the Central Bank Act 1971, or 5</p> <p>(ii) any other financial institution that holds an account of any description of the firm (including holdings of investment instruments of the firm to which the direction has been given), 10</p> <p>to cease making payments from, or entering into other transactions in respect of, the account without the prior authorisation of that authority. 20</p> <p>(2) A direction given under subparagraph (1)(b) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p>(3) An institution that, without reasonable excuse, fails to comply with a direction given under subparagraph (1)(b) commits an offence.”. 25</p>

PART 6

AMENDMENT OF CONSUMER CREDIT ACT 1995 30

Item	Provision affected	Amendment
1.	Section 93	<p>Substitute the following subsections for subsections (13) to (19):</p> <p>“(13) If, having considered any representations that may have been made under subsection (12), the Bank decides to refuse to grant a licence, it shall, by notice in writing, inform the applicant of the decision. The notice must specify the grounds for the decision. 35</p> <p>(14) If, having considered any representations that may have been made under subsection (12), the Bank decides to suspend or revoke a moneylender’s licence, or to vary any term or condition of such a licence, it shall notify the decision to the holder of the licence, together with the grounds for the decision. 40</p> <p>(15) The Bank shall deliver a notice referred to in subsection (13) or (14) personally or send it by prepaid registered post to the business address of the applicant for an authorisation or the holder of the authorisation concerned, as the case requires. 50</p> <p>(16) The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p>(a) a decision to refuse to grant a moneylender’s licence; 55</p>

Item	Provision affected	Amendment
		<p>(17) If a notice under this section relates to a decision of the Bank—</p> <p>(a) suspending or revoking an authorisation, or</p> <p>(b) varying the terms or conditions of an authorisation,</p> <p>the decision takes effect at the end of the period allowed for appealing against the decision under Part VIIA of the Central Bank Act 1942 unless an appeal against the decision is lodged under that Part within that period.</p> <p>(18) If an appeal is lodged under Part VIIA of the Central Bank Act 1942 by a holder of an authorisation against a decision of the Bank—</p> <p>(a) suspending or revoking an authorisation, or</p> <p>(b) varying the terms or conditions of an authorisation,</p> <p>the decision does not take effect unless it is confirmed by the Irish Financial Services Appeals Tribunal or the appeal is withdrawn.</p> <p>(19) In this section, ‘authorisation’ means a mortgage intermediaries authorisation.”.</p>

PART 7

AMENDMENT OF CREDIT UNION ACT 1997

Item	Provision inserted	Amendment
1.	Section 8	<p>Substitute the following subsections for subsections (3) and (4):</p> <p>“(3) If the Bank refuses to register as a credit union a society that has made an application for registration, it shall, by notice in writing, inform the society of the refusal. The notice must include a statement setting out the grounds for the refusal.</p> <p>(4) A decision of the Bank refusing to register a society as a credit union is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
2.	Section 11	<p>Substitute the following subsection for subsection (3):</p> <p>“(3) A decision of the Bank declining to give its approval under subsection (2)(b) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
3.	Section 14	<p>Substitute the following subsections for subsection (5):</p> <p>“(5) If the Bank is not satisfied that an amendment of a credit union’s rules sent to it under subsection (2) is not contrary to the provisions of this Act, it shall refuse to register the amendment, in which case it shall give the credit union a notice of its refusal to register the amendment. The notice must include a statement setting out the grounds for the refusal.</p>

Item	Provision inserted	Amendment
5		(5A) A decision of the Bank refusing to register an amendment of a credit union's rules under subsection (5) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942."
4.	Section 52	<p data-bbox="355 260 898 296">Substitute the following section for section 52:</p> <p data-bbox="355 302 898 401">"Appeal against certain decisions of Bank. 52.—The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p data-bbox="537 407 898 485">(a) a decision of the Bank under section 49(3)(b) to refuse to grant approval;</p> <p data-bbox="537 491 898 590">(b) a decision of the Bank under section 50(3)(a) to withdraw an approval granted under section 49;</p> <p data-bbox="537 596 898 695">(c) a decision of the Bank under section 50(3)(b) to vary any condition imposed on such an approval;</p> <p data-bbox="537 701 898 877">(d) a decision to impose any condition on such an approval (whether at the time the approval is granted or later by virtue of section 50 (3)(c))."</p>
5.	Section 96	<p data-bbox="355 884 898 940">Substitute the following subsections for subsections (2) to (7):</p> <p data-bbox="399 947 898 1073">“(2) The removal or suspension from office by the Bank of a director or member of the Supervisory Committee of a credit union under subsection (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p data-bbox="399 1079 898 1283">(3) If a director or member of the Supervisory Committee of a credit union is removed by the Bank under this section or if, on the hearing of an appeal against the removal, the removal is confirmed by the Irish Financial Services Appeals Tribunal under Part VIIA of the Central Bank Act 1942, the vacancy caused by the removal shall be treated as a casual vacancy.</p> <p data-bbox="399 1289 898 1451">(4) A director or member of the Supervisory Committee of a credit union who is removed from office under this section is, for 5 years from the date when the removal takes effect, disqualified from holding office as an officer, auditor or voluntary assistant of a credit union.</p> <p data-bbox="399 1457 898 1598">(5) If a director or member of the Supervisory Committee of a credit union is suspended under this section, the remaining directors or members of the Supervisory Committee constitute the board of directors or the Supervisory Committee.</p> <p data-bbox="399 1604 898 1711">(6) No claim lies against the Bank, the Minister or the State for any loss of office arising directly or indirectly from any of the provisions of this section.”.</p>

Item	Provision inserted	Amendment
6.	Section 97	<p>Substitute the following subsection for subsection (3):</p> <p style="text-align: right;">5</p> <p style="padding-left: 40px;">“(3) The Bank shall not cancel the registration of a credit union otherwise than—</p> <p style="padding-left: 80px;">(a) at its own request, or</p> <p style="padding-left: 80px;">(b) under subsection (2),</p> <p>unless it has given the credit union at least 2 months’ notice in writing specifying the ground on which it is proposed to cancel that registration.”.</p> <p style="text-align: right;">10</p>
7.	Section 99	<p>Substitute the following section for section 99:</p> <p>“Appeals against cancellation or suspension.</p> <p style="padding-left: 40px;">99.—(1) The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p style="padding-left: 80px;">(a) a decision of the Bank under section 97(3) or section 98(3) proposing to cancel or suspend the registration of a credit union; 15</p> <p style="padding-left: 80px;">(b) a decision of the Bank under section 98(1)(b) renewing the suspension of the registration of a credit union so that the suspension extends beyond 3 months from when the suspension began. 20</p> <p style="padding-left: 40px;">(2) A decision cancelling the registration of a credit union does not take effect until—</p> <p style="padding-left: 80px;">(a) the end of the period within which an appeal against the decision may be lodged under Part VIIA of the Central Bank Act 1942, or 30</p> <p style="padding-left: 80px;">(b) if an appeal is lodged against the decision within that period— 35</p> <p style="padding-left: 120px;">(i) the confirmation of the decision by the Irish Financial Services Appeals Tribunal on the hearing of the appeal, or 40</p> <p style="padding-left: 120px;">(ii) the withdrawal of the appeal,</p> <p style="padding-left: 40px;">whichever first occurs.”.</p>

Item	Provision inserted	Amendment	
	<p data-bbox="511 147 633 262">Court may revoke or amend order made under paragraph 3.</p> <p data-bbox="511 283 633 409">What action may be taken when regulatory direction is in force.</p>	<p data-bbox="649 147 1055 220">4. The Court may by order revoke or amend an order made by it under paragraph 3.</p> <p data-bbox="649 283 1055 357">5. If a regulatory direction is in force in respect of a credit union, the following provisions apply:</p> <p data-bbox="698 378 1055 493">(a) the credit union shall take all necessary steps to ensure that its assets, wherever held, are depleted only in accordance with the approval of the Bank;</p> <p data-bbox="698 514 1055 777">(b) the Court may, on the application of the Bank, make an order directing a bank, or any institution exempt under section 7 of the Central Bank Act 1971, that holds an account of the credit union to suspend the making of payments from the account for such period as the Court may consider appropriate in the circumstances;</p> <p data-bbox="698 798 1055 966">(c) the credit union shall make reasonable arrangements for using its funds to meet applications (duly made in accordance with its rules) by members for repayment of money subscribed or deposited by them;</p> <p data-bbox="698 987 1055 1281">(d) if it appears to the Bank that the credit union has been applying an undue proportion of its funds in making loans, in preference to making such arrangements as are referred to in paragraph (c), the Bank may, after giving notice to the credit union and giving it an opportunity of making representations, apply to the Court for the winding-up of the credit union.”.</p>	<p data-bbox="1079 189 1104 220">5</p> <p data-bbox="1079 388 1104 420">10</p> <p data-bbox="1079 535 1104 567">15</p> <p data-bbox="1079 651 1104 682">20</p> <p data-bbox="1079 798 1104 829">25</p> <p data-bbox="1079 913 1104 945">30</p> <p data-bbox="1079 1060 1104 1092">35</p> <p data-bbox="1079 1176 1104 1207">40</p>
9.	Fifth Schedule	Repeal the Schedule.	

PART 8

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AMENDMENT OF INVESTOR COMPENSATION ACT 1998

Item	Provision affected	Amendment	
1.	Section 25	<p data-bbox="511 1602 1055 1633">Substitute the following subsection for subsection (7):</p> <p data-bbox="560 1654 1055 1749">“(7) A refusal by the supervisory authority to approve a compensation scheme in accordance with this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	<p data-bbox="1079 1648 1104 1680">50</p>

Item	Provision affected	Amendment
2. 5 10 15 20 25	Section 26	<p data-bbox="360 149 792 174">Substitute the following section for section 26:</p> <p data-bbox="360 197 899 289">“Revocation of approval of compensation scheme. 26.—(1) The supervisory authority may, following consultation with the Company, revoke the approval of a compensation scheme if—</p> <p data-bbox="540 317 899 457">(a) that authority considers that the operator of the compensation scheme is not complying or has not complied with conditions or requirements imposed by it under section 25, or</p> <p data-bbox="540 485 899 674">(b) conditions have materially changed since the granting of the approval such that, if an application for approval were made at the relevant time, a different decision would be taken in relation to the application for approval.</p> <p data-bbox="496 701 899 814">(2) A decision of the supervisory authority revoking the approval of a compensation scheme is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
3. 30 35 40 45 50 55	Section 28	<p data-bbox="360 842 792 867">Substitute the following section for section 28:</p> <p data-bbox="360 890 899 982">“Direction under section 27 to be appealable. 28.—(1) A direction given under section 27 is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p data-bbox="496 1010 899 1079">(2) On hearing an appeal against a direction given under section 27, the Irish Financial Services Appeals Tribunal may—</p> <p data-bbox="540 1106 899 1131">(a) hear evidence from creditors, and</p> <p data-bbox="540 1159 899 1228">(b) make such interim or interlocutory order, if any, as it thinks appropriate.</p> <p data-bbox="496 1255 899 1325">(3) While a direction made under section 27 is in force in relation to an investment firm, the following provisions apply:</p> <p data-bbox="540 1352 899 1486">(a) if the firm is a body corporate, winding-up proceedings may be commenced, and a resolution for winding-up may be passed, in relation to the firm only with the prior sanction of the Court;</p> <p data-bbox="540 1514 899 1627">(b) if the firm is an unincorporated body, proceedings for an order of dissolution may be commenced only with the prior sanction of the Court;</p> <p data-bbox="540 1654 899 1747">(c) if the firm is a sole trader, bankruptcy proceedings may be commenced only with the prior sanction of the Court;</p>

Item	Provision affected	Amendment	
		(d) a receiver may be appointed over any of the assets of the firm, and those assets may be attached, sequestered or otherwise distrained only with the prior sanction of the Court.	5
		(4) The Court may hear the whole or any part of proceedings under this section otherwise than in public.	10
		(5) A creditor who is affected by a direction under section 27(3) may apply to the Court to vary or set aside that direction where it affects the interests of the creditor to a material degree.	15
		(6) If an investment firm that is an authorised investment firm for the purposes of the Act of 1995 fails to comply with a direction given under section 27, the supervisory authority may revoke the authorisation of the investment firm in accordance with that Act.	20
		(7) If an investment firm that is an authorised member firm for the purposes of the Stock Exchange Act 1995 fails to comply with a direction given under section 27, the supervisory authority may revoke the authorisation of the firm in accordance with that Act.	25 30
		(8) If an investment firm that is a credit institution fails to comply with a direction given under section 27, the Bank shall amend the authorisation of the credit institution under Council Directive No. 77/780/EEC of 12 December 1977 and Council Directive No. 89/646/EEC of 15 December 1989 so that the authorisation of the credit institution no longer permits the provision of investment services listed in the Annex to the Investment Services Directive and shall so inform the credit institution immediately.	35 40
		(9) If an investment firm that is an insurance intermediary fails to comply with a direction given under section 27, the supervisory authority shall inform the Company and the investment firm that the firm has failed to comply with its obligations under this Act.	45 50
		(10) If an investment firm referred to in subsection (6), (7) or (8) is subject to the Investor Compensation Directive, the supervisory authority shall give not less than 12 months notice to the firm of its intention to take action against the investment firm under the relevant subsection.”.	55

Item	Provision affected	Amendment
4.	Section 31	<p data-bbox="360 149 899 201">Substitute the following subsections for subsections (2) and (3):</p> <p data-bbox="402 222 899 317">“(2) A determination made by the supervisory authority in accordance with this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.</p> <p data-bbox="402 338 899 390">(3) Such a determination does not take effect until—</p> <p data-bbox="464 411 899 506">(a) the end of the period within which an appeal against the determination may be lodged under Part VIIA of the Central Bank Act 1942, or</p> <p data-bbox="464 527 899 579">(b) if an appeal is lodged against the determination within that period—</p> <p data-bbox="526 600 899 695">(i) the confirmation of the determination by the Irish Financial Services Appeals Tribunal on the hearing of the appeal, or</p> <p data-bbox="526 716 837 747">(ii) the withdrawal of the appeal,</p> <p data-bbox="526 768 756 800">whichever first occurs.”.</p>
5.	Second Schedule	<p data-bbox="360 823 899 854">Substitute the following Schedule for the Second Schedule:</p> <p data-bbox="526 875 899 907">“SECOND SCHEDULE Section 28.</p> <p data-bbox="435 928 876 1001">SUPPLEMENTARY PROVISION IN RELATION TO A DIRECTION BY A SUPERVISORY AUTHORITY UNDER SECTION 27</p> <p data-bbox="360 1022 899 1117">Interpretation: 1. In this Schedule— Second Schedule. ‘direction’ means a direction given under section 27;</p> <p data-bbox="493 1138 899 1211">‘investment firm’ includes every director or other person who has responsibility for managing an investment firm.</p> <p data-bbox="360 1232 899 1285">When a direction is to terminate. 2. A direction in force in relation to an investment firm terminates—</p> <p data-bbox="539 1306 899 1358">(a) at the end of the period specified in the direction, or</p> <p data-bbox="539 1379 899 1495">(b) if on the hearing of an appeal against the direction the Irish Financial Services Appeals Tribunal varies that period, at the end of that period as varied, or</p> <p data-bbox="539 1516 899 1589">(c) if the firm is a body corporate and a winding-up order is made in respect of the firm, or</p> <p data-bbox="539 1610 899 1684">(d) if the firm is an unincorporated body and a dissolution order is made in respect of the firm, or</p> <p data-bbox="539 1705 899 1778">(e) if the firm is a sole trader and the firm is adjudicated bankrupt, on the adjudication,</p> <p data-bbox="493 1799 708 1831">whichever first occurs.</p>

Item	Provision affected	Amendment	
		<p>What happens when direction is in force.</p> <p>3. If a direction is in force in relation to an investment firm, the following provisions apply:</p> <p>(a) the firm shall take all necessary steps to ensure that its assets or client or investor assets, wherever held, are only depleted in accordance with the prior approval of the supervisory authority;</p> <p>(b) that authority may direct a credit institution or any institution exempt under section 7 of the Central Bank Act 1971, or any other financial institution that holds an account in respect of the firm (including holdings of investment instruments of the firm) to suspend the making of payments from, or otherwise dealing with, the account without the prior approval of that authority.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>

PART 9

AMENDMENT OF ASSET COVERED SECURITIES ACT 2001

Item	Provision affected	Amendment	
1.	Section 26	<p>Substitute the following section for section 26:</p> <p>“Certain decisions of Authority to be appealable to the Irish Financial Services Appeals Tribunal.</p> <p>26.—The following decisions of the Authority are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p>(a) the rejection of an application made under section 13;</p> <p>(b) the imposition of a condition when granting such an application;</p> <p>(c) a variation of a condition of registration under section 16;</p> <p>(d) the revocation of the registration of a designated credit institution under section 19;</p> <p>(e) a direction given under section 20 or 21 in respect of a designated credit institution.”.</p>	<p>30</p> <p>35</p> <p>40</p> <p>45</p>

PART 3

AMENDMENT OF EUROPEAN COMMUNITIES (NON-LIFE INSURANCE)
(AMENDMENT) (NO. 2) REGULATIONS 1991 (S.I. NO. 142 OF 1991)

Item	Provision affected	Amendment	
			5
1.	Article 14	Substitute the following paragraph for paragraph (d) of sub-article (3): “(d) A decision of the Bank refusing an application by an undertaking for a certificate referred to in subparagraph (a) or (b) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.	10
2.	Article 15	Substitute the following sub-article for sub-article (7): “(7) A decision of the Bank refusing an application for an authorisation is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.	15
3.	Article 17	Substitute the following paragraph for paragraph (b) of sub-article (7): “(b) A decision of the Bank adopting any measure specified in sub-articles (2) to (6) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.	20

PART 4

AMENDMENT OF EUROPEAN COMMUNITIES (LICENSING AND SUPERVISION OF CREDIT INSTITUTIONS) REGULATIONS 1992 (S.I. NO. 395 OF 1992)

Item	Provision affected	Amendment	
			25
1.	Regulation 14	Substitute the following paragraph for paragraph (12): “(12) A direction issued under paragraph (10) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.	30
2.	Regulation 18	In paragraph (3), substitute “17A” for “17” wherever occurring.	35
3.	Regulation 22	Substitute the following Regulation: “Appeal against Decision of Bank refusing to transmit certain information to be appealable. 22. A decision of the Bank under Regulation 21 refusing to transmit the relevant information to the competent authority of the Member State concerned is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.	40
4.	Regulation 27	Substitute the following paragraph for paragraphs (5) to (9): “(5) A direction issued to an institution under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.	45

Item	Provision affected	Amendment
5.	Regulation 29	<p>(a) Substitute the following paragraph for paragraph (3):</p> <p>“(3) A direction issued to an institution under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p> <p>(b) Substitute the following paragraph for paragraphs (5) and (6):</p> <p>“(5) If the Commission issues a direction, as provided for under paragraph 7 of Article 21 of the Directive, that the measures in question should be amended, suspended or terminated, the Bank shall comply with that direction without delay.”.</p>
6.	Regulation 30	Delete “or seeks an order of the Court under Regulation 27”.

PART 5

20 AMENDMENT OF EUROPEAN COMMUNITIES (NON-LIFE INSURANCE) FRAMEWORK REGULATIONS 1994 (S.I. NO. 359 OF 1994)

Item	Provision affected	Amendment
1.	Article 5	Repeal the Article.
2.	Article 16	<p>Substitute the following Article for Article 16:</p> <p>“Failure to comply with technical reserves requirements.</p> <p>16. (1) If an insurance undertaking whose head office is located in the State fails to comply with Article 13, the Bank may, after notifying the supervisory authorities of the Member States in which the risks underwritten by the undertaking exist, give the undertaking a direction in writing prohibiting the free disposal of the undertaking’s assets.</p> <p>(2) If the solvency margin of an insurance undertaking whose head office is located in the State falls below the minimum amount required by Articles 3 and 4 of Part A of Annex II, the Bank shall give the undertaking a direction in writing requiring the undertaking to submit for the Bank’s approval a plan for restoring the undertaking to a sound financial position.</p> <p>(3) If, where sub-article (2) applies, it appears to the Bank that the financial position of an insurance undertaking is likely to deteriorate further, the Bank may give the undertaking a further direction in writing restricting or prohibiting the free disposal of the undertaking’s assets.</p>

Item	Provision affected	Amendment
		<p>(4) On giving such a direction, the Bank—</p> <p>(a) shall inform the supervisory authorities of the Member States in which the undertaking carries on insurance business that it has given the direction to the undertaking, and 5 10</p> <p>(b) may ask those authorities to take measures in relation to the undertaking corresponding to those prescribed by this sub-article. 15</p> <p>(5) If the solvency margin of an insurance undertaking whose head office is located in the State falls below the guarantee fund referred to in Part B of Annex II, the Bank— 20</p> <p>(a) shall give to the undertaking a further direction in writing requiring the undertaking to submit for the Bank's approval a short-term finance scheme, and 25</p> <p>(b) may include in the direction, or in another direction, a requirement restricting or prohibiting the undertaking from freely disposing of its assets. 30</p> <p>(6) On giving a direction under sub-article (5), the Bank—</p> <p>(a) shall inform the supervisory authorities of the Member States in which the undertaking carries on insurance business that it has given the direction to the undertaking, and 35</p> <p>(b) may ask those authorities to take measures in relation to the undertaking corresponding to those prescribed by this sub-article. 40</p> <p>(7) If the Bank has given a direction to an insurance undertaking in accordance with a provision of sub-articles (1) to (6), the Bank may give the undertaking such further directions as it thinks necessary to safeguard the interests of insured persons. 45 50</p> <p>(8) If the supervisory authority of an insurance undertaking located in another Member State asks the Bank to take measures restricting or prohibiting the undertaking from freely disposing of the assets of the undertaking located in the State, the Bank may give a direction in writing restricting or prohibiting the undertaking from freely disposing of the assets of the undertaking that are located in the State. 55 60</p>

Item	Provision affected	Amendment
5		(9) A direction or requirement given or imposed by the Bank under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.
10	3. Article 18	<p data-bbox="402 268 898 321">(a) Substitute the following paragraph for paragraph (c):</p> <p data-bbox="500 342 898 510">“(c) the Bank may give to the undertaking a direction in writing requiring the undertaking to take such further measures to safeguard the interests of persons insured by the insurance undertaking as are specified in the direction.”;</p> <p data-bbox="402 531 898 583">(b) Insert the following sub-article as sub-article (2) at the end of the Article:</p> <p data-bbox="508 604 898 699">“(2) The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p data-bbox="553 720 898 793">(a) a decision of the Bank revoking the authorisation of an insurance undertaking under Article 17;</p> <p data-bbox="553 814 898 888">(b) a restriction or direction imposed or given by the Bank under sub-article (1).”.</p>
30	4. Article 20	<p data-bbox="362 913 898 966">Substitute the following sub-articles for sub-articles (6) to (8):</p> <p data-bbox="423 987 898 1123">“(6) If the Bank reasonably believes that the control exercised by the person or persons referred to in sub-article (1) is likely to operate against the prudent and sound management of an insurance undertaking, it may, for the purposes of putting an end to that situation, give to the undertaking—</p> <p data-bbox="467 1144 898 1218">(a) a direction in writing suspending the voting rights attached to the shares held by the shareholders or members in question, or</p> <p data-bbox="467 1239 898 1270">(b) such other direction as it thinks fit.</p> <p data-bbox="423 1291 898 1459">(7) The Bank may also give a similar direction to persons who fail to comply with the notification requirements referred to in sub-article (1). If a holding is acquired contrary to this Article, the Bank may give to the persons concerned a direction in writing suspending the corresponding voting rights or the nullity of votes cast.</p> <p data-bbox="423 1480 898 1554">(8) A direction given by the Bank under this Article is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
50	5. Article 28	<p data-bbox="362 1579 898 1610">Substitute the following sub-article for sub-article (8):</p> <p data-bbox="402 1631 898 1726">“(8) A decision of the Bank refusing or failing to provide the relevant information is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
55	6. Article 46	Repeal the Article.

PART 6

AMENDMENT OF EUROPEAN COMMUNITIES (LIFE ASSURANCE)
FRAMEWORK REGULATIONS 1994 (S.I. NO. 360 OF 1994)

Item	Provision affected	Amendment	
1.	Article 5	Repeal the Article.	5
2.	Article 36	<p data-bbox="516 317 954 342">Substitute the following Article for Article 36:</p> <p data-bbox="516 365 1057 579">“Failure to comply with technical reserves requirements (including mathematical reserves). 36. (1) If an insurance undertaking whose head office is located in the State fails to comply with Article 12, the Bank may, after notifying the supervisory authorities of the Member States in which the commitments underwritten by the undertaking exist, give the undertaking a direction in writing prohibiting it from freely disposing of its assets. 10 15</p> <p data-bbox="516 604 1057 816">(2) If the solvency margin of an insurance undertaking whose head office is located in the State falls below the minimum amount required under sub-article 2 (ii) of Article 7, the Bank shall give the undertaking a direction in writing requiring the undertaking to submit to the Bank for its approval a plan for restoring the undertaking to a sound financial position. 20 25</p> <p data-bbox="516 842 1057 1031">(3) If, where sub-article (2) applies, it appears to the Bank that the financial position of the insurance undertaking will deteriorate further, the Bank may give the undertaking a further direction in writing restricting or prohibiting the undertaking from freely disposing of the undertaking’s assets. 30</p> <p data-bbox="516 1056 1057 1102">(4) On giving a direction under sub-article (3), the Bank— 35</p> <p data-bbox="516 1127 1057 1268">(a) shall inform the supervisory authorities of the Member States in which the undertaking carries on insurance business that it has given the direction to the undertaking, and 40</p> <p data-bbox="516 1293 1057 1409">(b) may ask those authorities to take measures in relation to the undertaking corresponding to those prescribed by this sub-article. 45</p> <p data-bbox="516 1434 1057 1554">(5) If the solvency margin of an insurance undertaking whose head office is located in the State falls below the guarantee fund referred to in Part B of Annex II, the Bank— 50</p> <p data-bbox="516 1579 1057 1719">(a) shall give to the undertaking a further direction in writing requiring the undertaking to submit for the Bank’s approval a short-term finance scheme, and 55</p> <p data-bbox="516 1745 1057 1864">(b) may include in the direction, or in another direction, a requirement restricting or prohibiting the undertaking from freely disposing of its assets. 60</p>	

Item	Provision affected	Amendment
5 10 15 20 25 30 35		<p>(6) On giving a direction under sub-article (5), the Bank—</p> <p>(a) shall inform the supervisory authorities of the Member States in which the undertaking carries on insurance business that it has given the direction to the undertaking, and</p> <p>(b) may ask those authorities to take measures in relation to the undertaking corresponding to those prescribed by this sub-article.</p> <p>(7) If the Bank has given a direction to an insurance undertaking in accordance with a provision of sub-articles (1) to (6), the Bank may give the undertaking such further directions as it thinks necessary to safeguard the interests of insured persons.</p> <p>(8) If the supervisory authority of an insurance undertaking located in another Member State asks the Bank to take measures restricting or prohibiting the undertaking from freely disposing of the assets of the undertaking located in the State, the Bank may give a direction in writing restricting or prohibiting the undertaking from freely disposing of the assets of the undertaking that are located in the State.</p> <p>(9) A direction or requirement given or imposed by the Bank under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
3. 40 45 50 55 60	Article 38	<p>Substitute the following Article for Article 38:</p> <p>“Provisions applying in the case of revocation.</p> <p>38. (1) On revoking an authorisation under Article 37, the Bank shall—</p> <p>(a) inform the supervisory authorities of the other Member States in which the undertaking carries on business, and</p> <p>(b) after consulting those authorities, give to the undertaking a direction in writing restricting the free disposal by the undertaking of its assets in accordance with Articles 36 (1), 36 (3) and 36 (4).</p> <p>(2) The Bank may impose such further measures as it considers necessary to safeguard the interests of persons insured by the insurance undertaking.</p> <p>(3) The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p>(a) a decision revoking the authorisation of an insurance undertaking under Article 37;</p> <p>(b) a direction or measure given or imposed under this Article.”.</p>

Item	Provision affected	Amendment	
4.	Article 40	<p>Substitute the following sub-articles for sub-articles (6) to (8):</p> <p>“(6) If the Bank reasonably believes that the control exercised by the person or persons referred to in sub-article (1) is likely to operate against the prudent and sound management of an insurance undertaking, it may, for the purposes of putting an end to that situation, give to the undertaking—</p> <p>(a) a direction in writing suspending the voting rights attached to the shares held by the shareholders or members in question, or</p> <p>(b) such other direction as it thinks fit.</p> <p>(7) The Bank may also give a similar direction to persons who fail to comply with the notification requirements referred to in sub-article (1). If a holding is acquired contrary to this Article, the Bank may give to the persons concerned a direction in writing suspending the corresponding voting rights or the nullity of votes cast.</p> <p>(8) A direction given by the Bank under this Article is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	5 10 15 20
5.	Article 46	<p>Substitute the following sub-article for sub-article (7):</p> <p>“(7) A decision of the Bank refusing or failing to provide relevant information is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	25
6.	Article 62	Repeal the Article.	30

PART 7

AMENDMENT OF SUPERVISION OF CREDIT INSTITUTIONS, STOCK EXCHANGE MEMBER FIRMS AND INVESTMENT BUSINESS FIRMS REGULATIONS 1996 (S.I. NO. 267 OF 1996)

Item	Provision affected	Amendment	
1.	Regulation 10	<p>Substitute the following Regulation:</p> <p>“10. A decision of a supervisory authority under these regulations is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>	35 40

PART 8

AMENDMENT OF EUROPEAN COMMUNITIES (ELECTRONIC MONEY)
REGULATIONS 2002 (S.I. NO. 221 OF 2002)

Item	Provision affected	Amendment
5	1. Regulation 15	<p data-bbox="355 268 896 317">Substitute the following paragraph for paragraphs (7) to (11):</p> <p data-bbox="399 338 896 457">“(7) A decision of the Bank refusing to transmit the relevant information to the competent authority of the Member State concerned is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”.</p>
10	2. Regulation 28	<p data-bbox="355 485 896 533">Substitute the following paragraphs for paragraphs (5) to (11):</p> <p data-bbox="399 554 896 646">“(5) The Bank may at any time, by notice given in writing to the electronic money institution concerned, vary or revoke a direction given under Regulation 27(3).</p> <p data-bbox="399 667 896 808">(6) The Bank may, by giving a further direction in writing, extend the period of operation of a direction given under Regulation 27(3), for such further period, not exceeding 12 months from the date the direction started to have effect, as the Bank considers appropriate.</p> <p data-bbox="399 829 896 877">(7) A direction given under Regulation 27(3) ceases to have effect—</p> <p data-bbox="443 898 896 991">(a) at the end of the period specified in the direction or, if the period of its operation has been extended, at the end of that extended period, or</p> <p data-bbox="443 1012 896 1060">(b) on the making of a winding up order in respect of the institution concerned,</p> <p data-bbox="399 1081 896 1115">whichever first occurs.</p> <p data-bbox="399 1136 896 1184">(8) If a direction under Regulation 27(3) is in force—</p> <p data-bbox="443 1205 896 1283">(a) winding up or bankruptcy proceedings may be commenced in relation to the electronic money institution concerned, and</p> <p data-bbox="443 1304 896 1352">(b) a receiver over the property of that institution may be appointed, and</p> <p data-bbox="443 1373 896 1451">(c) the property of that institution may be attached, sequestered or otherwise distrained,</p> <p data-bbox="399 1472 896 1505">only with the prior approval of the Court.</p> <p data-bbox="399 1526 896 1692">(9) If it appears to the Bank that an electronic money institution in respect of which the direction was given under Regulation 27(3) is able to meet its obligations to its creditors but the circumstances that gave rise to the direction are unlikely to be rectified, it may give the institution a further direction requiring the institution—</p> <p data-bbox="443 1713 896 1860">(a) to prepare, in consultation with the Bank, a scheme for the orderly termination of its business relating to issuing e-money, and the discharge of its liabilities in relation to its issued e-money, under the supervision of the Bank, and</p>
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Item	Provision affected	Amendment
		<p>(b) to submit the scheme to the Bank for its approval within 2 months after preparing the scheme. 5</p> <p>(10) If it appears to the Bank that an electronic money institution to which a direction has been given under paragraph (9)—</p> <p>(a) has failed, or is failing, to comply with the direction, or 10</p> <p>(b) has failed, or is failing, to comply with the terms of the scheme as approved by the Bank,</p> <p>the Court may, on the application of the Bank, make such order as it considers appropriate, including— 15</p> <p>(i) an order of committal, or</p> <p>(ii) if the institution is a body corporate, a winding-up order on the grounds that it is just and equitable that the institution should be wound up, or 20</p> <p>(iii) if the institution is a partnership, an order dissolving the partnership on the grounds that it is just and equitable that the institution should be dissolved. 25</p> <p>(11) A direction given by the Bank under Regulation 27(3) or under this Regulation is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.” 30</p>
3.	Regulation 40	<p>Substitute the following paragraph for paragraphs (5) to (8):</p> <p>“(5) A direction issued under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.”. 35</p>
4.	Regulation 41	<p>Substitute the following Regulation:</p> <p>“Direction by Bank to cease business. 41. (1) This Regulation applies to an electronic money institution authorised in another Member State. 40</p> <p>(2) If—</p> <p>(a) the Bank considers that it is necessary, in the interests of the proper and orderly regulation of financial markets in the State, or 45</p> <p>(b) the electronic institution concerned has had its authorisation withdrawn, revoked or suspended, in whole or in part, in accordance with the law of the relevant Member State, 50</p> <p>the Bank may dispense with the requirements of Regulation 40 in relation to the notification of that institution. 55</p>

Item	Provision affected	Amendment
5		(3) If the Bank dispenses with the requirements of Regulation 40 in relation to the notification of an electronic money institution, the competent authority of the other Member State and the Bank may direct that institution to take such measures as the Bank may specify, including a direction—
10		(a) that the institution cease to provide e-money services in the State, and
15		(b) where the institution has a branch in the State, that the business of the branch be wound up or dissolved by the Court in an orderly manner.
20		(4) A direction given by the Bank under paragraph (3) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.
25		(5) As soon as practicable after taking measures under paragraph (3), the Bank shall inform the European Commission and the competent authority of the relevant Member State of those measures.
30		(6) The Bank shall comply with any direction given by the European Commission in accordance with paragraph 7 of Article 22 of the Codified Directive to amend, suspend or terminate measures that the Bank has directed an electronic money institution to take under paragraph (3).”.

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PART 9

AMENDMENT OF EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2003 (S.I. No. 211 OF 2003)

Item	Provision affected	Amendment
40	1. Regulation 14	Substitute the following Regulation:
45	“Refusal of authorisation and right of appeal.	14. (1) As soon as practicable after deciding to refuse an application for authorisation the Bank shall, by notice in writing, inform the company of its decision. A decision refusing the application must include a statement of the grounds on which it is based.
50		(2) If the application complies with Regulation 13, the Bank shall in any case comply with paragraph (1) within 6 months after the date on which the Bank received the application.”.

Item	Provision affected	Amendment
2.	Regulation 104	<p data-bbox="516 149 857 176">Substitute the following Regulation:</p> <p data-bbox="516 197 1055 247">“Directions by 104. (1) If the Bank is of the opinion the Bank. that— 5</p> <p data-bbox="699 268 1055 319">(a) it is in the public interest to do so, or</p> <p data-bbox="699 340 1055 415">(b) it is in the interests of the orderly and proper regulation of UCITS, or 10</p> <p data-bbox="699 436 1055 512">(c) any of the requirements for auth- orising a UCITS are no longer satisfied, or</p> <p data-bbox="699 533 1055 609">(d) the management company, invest- ment company or trustee of 15 such a UCITS—</p> <p data-bbox="760 630 1055 722">(i) has become or is likely to become unable to meet its obligations to its creditors, or 20</p> <p data-bbox="760 743 1055 1037">(ii) has contravened any pro- vision of these Regulations, or has failed to comply with any condition or require- ment imposed under these Regulations by the Bank, or in purported compliance with any such provision, 25 has provided the Bank with information that it knows 30 to be false, inaccurate or misleading, or</p> <p data-bbox="760 1058 1055 1150">(iii) is not maintaining adequate capital resources having regard to the volume and 35 nature of its business, or</p> <p data-bbox="760 1171 1055 1297">(iv) no longer complies with the capital or other financial requirements imposed by the Bank from time to 40 time,</p> <p data-bbox="654 1318 1055 1633">the Bank may give a direction in writing to the management company, investment company or trustee requiring it to take such steps (including the winding-up of the 45 UCITS or the suspension of the issue or redemption of units of the UCITS, or both) from a date specified in that direction until such further date as is specified in that 50 direction, or in another direction, as the Bank considers necessary in the interests of the orderly and proper regulation of UCITS or for the protection of unit-holders or creditors of the UCITS.</p> <p data-bbox="654 1654 1055 1747">(2) If a direction under paragraph (1) affects a particular UCITS, the UCITS shall immediately notify its unit-holders of the terms of the direction. 55</p>

Item	Provision affected	Amendment
5		<p>(3) The revocation of the authorisation of a UCITS does not affect the operation of a direction given under paragraph (1) that is then in force. A direction may be given under that paragraph in relation to a UCITS whose authorisation has been revoked so long as a direction under that paragraph was already in force at the time of revocation.</p>
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15		<p>(4) For the purposes of paragraph (1), the Bank may take into account any matter relating to the UCITS, management company, investment company, trustee or any person employed by or associated with the management company, investment company or trustee in connection with the UCITS.</p>
20		<p>(5) The Bank may revoke a direction under paragraph (1) unless an order under paragraph (10) has been made in respect of that direction.</p>
25		<p>(6) A direction of the Bank given under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 at the instance of—</p>
30		<p>(a) a management company, investment company or trustee to which the direction relates, or</p>
35		<p>(b) any creditor who is affected by the direction.</p>
40		<p>(7) A direction given under paragraph (1) ceases to have effect—</p>
45		<p>(a) when the period specified in the direction expires, or</p>
50		<p>(b) if, on the hearing of an appeal against the direction by the Irish Financial Services Appeals Tribunal, the Tribunal confirms the direction but varies the period, when that period expires, or</p>
55		<p>(c) on the making of a winding-up order in respect of the UCITS, or with the sanction of the court, the dissolution of the UCITS,</p>
60		<p>whichever occurs first.</p>

Item	Provision affected	Amendment
		<p>(8) If the Bank is of the opinion that, even if the management company, investment company or trustee concerned appears to be able to meet its obligations to its creditors, the circumstances giving rise to the direction are likely to continue to exist after the giving of direction, it may give a further direction in writing to the UCITS requiring it—</p> <p>(a) to prepare, in consultation with the Bank, a scheme for the orderly termination of its business and the discharge of its liabilities, and</p> <p>(b) to submit the scheme to the Bank for its approval within 3 months after its preparation.</p> <p>(9) If a management company, investment company or trustee of a UCITS—</p> <p>(a) has failed, or is failing, to comply with a direction given by the Bank under paragraph (8), or</p> <p>(b) has failed, or is failing, to comply with a scheme approved by the Bank under that paragraph,</p> <p>the court may, on the application of the Bank, make such order as it considers appropriate (including an order of committal or a winding-up order on the grounds that it is just and equitable that the management company, investment company or trustee be wound up).</p> <p>(10) The court may, on application under paragraph (9) hear evidence from creditors, and the court may make such interim or interlocutory order, as it considers appropriate.</p> <p>(11) While a direction under paragraph (1) is in force—</p> <p>(a) the UCITS to which it relates may not be dissolved, and</p> <p>(b) the court may, by order, restrain any disposal of the assets of the UCITS on the ground that such a disposal could have the effect of perpetrating a fraud on the UCITS, its creditors or unit-holders.”.</p>

Item	Provision affected	Amendment
3.	Regulation 105	Substitute the following Regulation: <p>“Certain decisions of Bank to be appealable.</p> <p>105.—The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:</p> <p>(a) a decision refusing an application for authorisation under Regulation 14(1);</p> <p>(b) a failure to decide an application within the period prescribed by Regulation 14(2);</p> <p>(c) a decision revoking or refusing an application to revoke an authorisation;</p> <p>(d) a decision replacing or proposing to replace a management company or trustee under Regulation 101.”.</p>

SCHEDULE 3

Section 30.

MISCELLANEOUS AMENDMENTS TO OTHER ACTS ADMINISTERED BY THE BANK

PART 1

AMENDMENT OF INSURANCE ACT 1936

Item	Provision affected	Amendment
1.	Section 3	<p>(a) Insert “(1)” before “In this Act”;</p> <p>(b) Insert the following subsection at the end of the section:</p> <p>“(2) A financial contract within the meaning of the Netting of Financial Contracts Act 1995 is not, and is taken never to have been, a contract of insurance for the purposes of—</p> <p>(a) the Insurance Acts 1909-2002, or</p> <p>(b) regulations in force under those Acts, or</p> <p>(c) regulations relating to insurance that are in force under the European Communities Act 1972.</p> <p>However, this subsection does not have effect if the financial contract provides for any benefit that may accrue to a party to the contract to be conditional on the occurrence of a loss or detriment to which the party is required to be exposed under the contract.”.</p>
2.	Section 51 (as amended by item 17 of Part 2 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	In subsection (2), substitute “may not pay or undertake” for “may pay, or undertake”.

PART 2

AMENDMENT OF COMPANIES ACT 1963

Item	Provision affected	Amendment	
1.	Section 103	<p>In subsection (1)(b), insert the following subparagraph after subparagraph (iii):</p> <p>“(iii<i>a</i>) if the charge is a floating one, granted by a company to the Central Bank and Financial Services Authority of Ireland for the purposes either of providing or securing collateral, particulars of any provision of the charge that has the effect of prohibiting or restricting the company from issuing further securities that rank equally with that charge or modifying the ranking of that charge in relation to securities previously issued by the company;”.</p>	<p>5</p> <p>10</p> <p>15</p>

PART 3

AMENDMENT OF INSURANCE ACT 1964

Item	Provision affected	Amendment	
1.	Section 3 (as amended by section 31 of the Insurance Act 1989)	In subsection (1B), substitute “in respect of a risk” for “in the State in respect of a risk situated in the State”.	<p>20</p> <p>25</p>
2.	Section 6 (as amended by section 10 of the Insurance (No. 2) Act 1983 and by section 31 of the Insurance Act 1989)	<p>In subsection (2)(d), substitute the following definition for the definition of “aggregate income”:</p> <p>“ ‘aggregate income’, in relation to an insurer in respect of any period, means the gross amount of premiums paid or payable to the insurer in respect of policies issued by the insurer during that period;”.</p>	<p>30</p>

PART 4

AMENDMENT OF CENTRAL BANK ACT 1971

Item	Provision affected	Amendment
5	Section 2 (as amended by section 70(c) of the Central Bank Act 1997 and item 1 of Part 6 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	(a) In subsection (1), insert the following definitions after the definition of “the Act of 1942”:
10		“ ‘Amsterdam Treaty’ means the treaty signed in Amsterdam on 2 October 1997 amending the Treaty on European Union;
		‘associated company’, in relation to the holder of a licence, means a company in respect of which—
15		(a) not less than 20 per cent of the nominal value of the company’s equity share capital is held by the company, or
20		(b) not less than 20 per cent of shares carrying voting rights (other than voting rights that arise only in particular circumstances) are so held;”;
25		(b) In subsection (1), substitute the following definition for the definition of “banking business”:
		“ ‘banking business’, in relation to a person, means any business that consists of or includes—
30		(a) receiving money on the person’s own account from members of the public either on deposit or as repayable funds (whether or not the issue of securities or any other form of financial obligation is involved), and
35		(b) any other business of a kind normally carried on by a bank (which may include the granting of credits on own account), and
40		(c) any other business of a kind prescribed under subsection (2) for the purpose of this paragraph,
45	but does not include such a business in so far as the business consists of or includes—	
50	(i) receiving money on deposit by a trader either from employees of the trader in relation to the trader’s business, or from customers of the trader in the normal course of the trader’s business, or	
55	(ii) receiving money in respect of leasing or selling goods under a hire-purchase agreement, a leasing agreement or credit-sale agreement, or	

Item	Provision affected	Amendment
		<p>(iii) receiving money as security or collateral or as a bond for the repayment of a debt or the performance of a contract related to goods or services, or 5</p> <p>(iv) receiving money accepted by way of advance or part payment under a contract for the sale, hire or other provision of goods or services, and repayable only in the event that the goods or services are not in fact sold, hired or otherwise provided, or 10 15</p> <p>(v) receiving money solely as a premium in respect of the issue or renewal of a life assurance policy issued by a holder of an authorisation under the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984), or 20 25</p> <p>(vi) receiving money accepted as a contribution within the meaning of the Pensions Acts, or 30</p> <p>(vii) receiving money where it can be shown that—</p> <p style="padding-left: 40px;">(I) no part of the business activities of the person receiving the money or of any other person is financed wholly or substantially out of those funds, and 35 40</p> <p style="padding-left: 40px;">(II) those funds are, in the normal course of business, accepted only on a casual or incidental basis, or 45</p> <p>(viii) receiving money under financial contracts (within the meaning of the Netting of Financial Contracts Act 1995) (which may include the acceptance of collateral).” 50 55</p> <p>(c) In subsection (1), insert the following definitions after the definition of “the Court”:</p> <p style="padding-left: 40px;">“ ‘ESCB Statute’ means the Statute of the European System of Central Banks and of the European Central Bank as set out in Protocol (No. 3) (annexed by the Treaty on European Union done at Maastricht on 7 February 1992) to the Rome Treaty; 60</p> <p style="padding-left: 40px;">‘functions’, in relation to the Bank, means the functions and duties imposed on the Bank by or under an enactment;” 65</p>

Item	Provision affected	Amendment
5		<p>(d) In subsection (1), insert the following definition after the definition of “holder”:</p> <p>“ ‘holding company’ has the meaning given by section 2 of the Central Bank Act 1942;”;</p>
10		<p>(e) In subsection (1), insert the following definition after the definition of “investment trust company”:</p> <p>“ ‘legal practitioner’ means a barrister or solicitor;”;</p>
15		<p>(f) In subsection (1), insert the following definition after the definition of “insurance undertaking”:</p> <p>“ ‘Maastricht Treaty’ means the Treaty on European Union done at Maastricht on 7 February 1992;”;</p>
20		<p>(g) In subsection (1), insert the following definitions after the definition of “the Minister”:</p> <p>“ ‘Pensions Acts’ means the Pensions Act 1990 as amended from time to time, and includes all Acts that are to be construed together with that Act as one Act;</p>
25		<p>‘record’ means any record of information, however compiled, recorded or stored, and includes—</p>
30		<p>(a) any book, a register and any other document containing information, and</p>
35		<p>(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;</p>
40		<p>‘related body’, in relation to the holder of a licence, means—</p> <p>(a) a subsidiary company of that holder, or</p>
45		<p>(b) if that holder is itself a subsidiary—</p> <p>(i) its holding company, or</p>
50		<p>(ii) any other subsidiary of its holding company,</p> <p>or</p>
55		<p>(c) an associated company of that holder, or</p> <p>(d) a partnership in which that holder has an interest, and whose business is or, at any relevant time, was in the Bank’s opinion materially relevant to an inspection being carried out, or proposed to be carried out, under section 17A;</p>

Item	Provision affected	Amendment
		<p data-bbox="667 153 1057 296">‘Rome Treaty’ means the Treaty establishing the European Community done at Rome on 25 March 1957, as amended by the Maastricht Treaty, the Amsterdam Treaty and any other later Treaty on European Union;”;</p> <p data-bbox="561 321 1057 369">(h) In subsection (1), insert the following definition after the definition of “securities”:</p> <p data-bbox="667 394 1057 464">“ ‘subsidiary company’ has the meaning given by section 2 of the Central Bank Act 1942;”;</p> <p data-bbox="561 489 1057 537">(i) Substitute the following subsection for subsection (2):</p> <p data-bbox="667 562 1057 674">“(2) On being satisfied that it would be consistent with the proper and orderly regulation of banking to do so, the Minister may, after consulting the Bank, make an order—</p> <p data-bbox="708 699 1057 821">(a) prescribing a category of business for the purpose of paragraph (c) of the definition of ‘banking business’ in subsection (1), or</p> <p data-bbox="708 846 1057 867">(b) amending that definition by—</p> <p data-bbox="773 892 1057 982">(i) adding a specified category of business to the exclusions specified in that definition, or</p> <p data-bbox="773 1008 1057 1077">(ii) removing a specified category of business from those exclusions, or</p> <p data-bbox="773 1102 1057 1192">(iii) substituting for a category of business specified in those exclusions another such category.”.</p>
2.	Section 7 (as amended by section 30 of the Central Bank Act 1989)	<p data-bbox="561 1224 1057 1272">(a) Substitute the following subsection for subsection (4):</p> <p data-bbox="667 1297 1057 1346">“(4) Subsection (1) does not apply in relation to—</p> <p data-bbox="708 1371 1057 1482">(a) the central bank of another member state of the European Communities that is a member of the European Central Bank, or</p> <p data-bbox="708 1507 1057 1528">(b) the Post Office Savings Bank, or</p> <p data-bbox="708 1554 1057 1623">(c) a trustee savings bank certified under the Trustee Savings Banks Acts 1863 to 1979, or</p> <p data-bbox="708 1648 1057 1745">(d) a building society, an industrial and provident society, a friendly society or a credit union, or</p>

Item	Provision affected	Amendment
5		(e) a manager, trustee or custodian of a unit trust or a collective investment undertaking or an entity that provides services to such an undertaking, or
10		(f) another member state of the European Communities, a regional or local authority of such a state, or a public international organisation of which one or more member states of the European Communities are members.
15		
20		(5) The Minister may, if satisfied that it would be in the interest of the proper and orderly regulation of banking or of any other financial market to do so, make an order amending subsection (4)—
25		(a) by adding to the subsection any specified body or any specified class of persons, or
30		(b) by omitting from the subsection any specified body or any specified class of persons,
		but only after consultation with the Bank and with such other Minister of Government or other persons as the Minister considers appropriate to so consult.”.
		(b) Insert the following subsection after subsection (5) (as inserted by paragraph (a)):
35		“(6) Subsection (1) does not apply to a person who acts on behalf of—
		(a) the Bank, or
		(b) the holder of a licence, or
		(c) a body or person referred to in subsection (4), or
40		(d) a credit institution or financial institution that is permitted by the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) to carry on business within the State, but only so long as the institution complies with all conditions imposed on such an institution by those Regulations and by or under an Act.”.
45		
50		

Item	Provision affected	Amendment
3.	Section 8 (as amended by section 31 of the Central Bank Act 1989 and section 70(d) of the Central Bank Act 1997)	<p>Substitute the following subsections for subsection (2):</p> <p style="padding-left: 40px;">“(2) The Bank may exempt a specified person, or the members of a specified class of persons, from being required to hold a licence where the requirement would arise only from the creation of securities or other obligations to which the definition of ‘banking business’ relates, but only if the Bank is satisfied that the granting of the exemption would be consistent with the proper and orderly regulation of banking. 5</p> <p style="padding-left: 40px;">(2A) An exemption granted under this section is subject to such conditions as the Bank thinks fit to impose. 10</p> <p style="padding-left: 40px;">(2B) The Bank shall revoke an exemption granted under this section if satisfied— 15</p> <p style="padding-left: 80px;">(a) that the circumstances relevant to the exemption have changed and are now such that the exemption would no longer be granted, or 20</p> <p style="padding-left: 80px;">(b) that a condition of the exemption is not being, or has not been, substantially complied with. 25</p> <p style="padding-left: 40px;">(2C) The Bank shall publish in <i>Iris Oifigiúil</i> a notice of every exemption and revocation under this section.”. 30</p>
4.	Section 15	<p>Substitute the following subsection for subsection (2):</p> <p style="padding-left: 40px;">“(2) If, on delivery of documents under section 352 of the Companies Act 1963, or under regulation 4 or 7 of the European Communities (Branch Disclosures) Regulations 1993 (S.I. No. 395 of 1993), it appears to the registrar of companies that the company to which those documents relate— 35</p> <p style="padding-left: 80px;">(a) would be holding itself out as carrying on business as a banker in the State, or 40</p> <p style="padding-left: 80px;">(b) would have as one of its objects in its memorandum of association the carrying on of banking business in the State,</p> <p style="padding-left: 40px;">the registrar shall give the Bank written notice of the matter.”. 45</p>
5.	Section 17 (as substituted by item 2 of Part 6 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	Delete subsection (5). 50 55

Item	Provision affected	Amendment
5 10	6. Section 17A (as substituted by item 2 of Part 6 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	In subsection (8), delete the definitions of “associated company”, “company”, “functions”, “holding company”, “legal practitioner”, “prescribed record”, “related body” and “subsidiary company”.
15 20 25 30 35 40 45 50 55	7. Section 18 (as substituted by section 37 of the Central Bank Act 1989 and amended by section 8 of the Central Bank Act 1998)	<p>Substitute the following section for section 18:</p> <p>“Holders of licences and others to provide Bank with required information and returns.</p> <p>18.—(1) This section applies to the following persons:</p> <p>(a) a person who is the holder of a licence;</p> <p>(b) any person who carries on—</p> <p>(i) a business of an associated company or related body of the holder of a licence, or</p> <p>(ii) a business in respect of which the person is, because of section 7(4)(b), exempt from being required to hold a licence, or</p> <p>(iii) a business as an investment trust company, or</p> <p>(iv) a business as a money-broker, or</p> <p>(v) a business as a financial intermediary, or</p> <p>(vi) a business of issuing, holding or otherwise participating in any market in financial instruments, including those to which Chapter VIII of Part II of the Central Bank Act 1989 applies.</p> <p>(2) A person to whom this section applies shall provide the Bank, at such times, or within such periods, as the Bank specifies from time to time, with such information and returns concerning the relevant business carried on by the person as the Bank specifies from time to time.</p> <p>(3) A person to whom this section applies shall, at such time or within such period as the Bank specifies, provide the Bank with such information or return (not being information or a return specified under subsection (2)) as it requests in writing concerning the relevant business carried on by the person.</p>

Item	Provision affected	Amendment
		<p>(4) A reporting agent designated by the European Central Bank shall provide the Bank or the European Central Bank, at such times or within such periods as the Bank or the European Central Bank specifies from time to time, with such information and returns concerning the activities of the agent as the Bank or the European Central Bank specifies from time to time. 5</p> <p>(5) A reporting agent designated by the European Central Bank shall, at such time or within such period as the Bank or European Central Bank specifies, provide the Bank or European Central Bank with such information or return (not being information or a return specified under subsection (4)) as the Bank or European Central Bank requests in writing concerning the activities of the agent. 10 15</p> <p>(6) The Bank may specify information or a return for the purposes of this section only if it considers it necessary to have that information or return for the proper performance of the functions imposed, or the proper exercise of the powers conferred, on it by law. 20</p> <p>(7) The European Central Bank may specify information or a return for the purposes of subsection (4) or (5) only if that Bank considers it necessary to have that information or return for the proper performance by that Bank of tasks and duties imposed, or the proper exercise of the powers conferred, on that Bank by or under the Rome Treaty or the ESCB Statute. 25</p> <p>(8) A person shall not provide for the purpose of this section information or a return that the person knows to be false or misleading in a material respect. 30</p> <p>(9) This section applies to the business of an associated company or a related body only in so far as the information and returns sought by the Bank are, in its opinion, materially relevant to the proper appraisal of the business of the holder of the licence concerned. 35</p> <p>(10) In this section—</p> <p>‘information and returns’ and ‘information or return’ include audited accounts and audited group accounts, and any other documents that are equivalent or correspond to audited accounts or audited group accounts; 40</p> <p>‘moneybroker’ has the same meaning as it has in section 108 of the Central Bank Act 1989, for the purposes of Chapter IX of that Act;</p> <p>‘relevant business’, in relation to a person to whom this section applies, means— 45</p> <p>(a) in the case of a person who is the holder of a licence, the banking business to which the licence relates, or</p> <p>(b) in the case of a person referred to in subsection (1)(b), the business carried on by the person.”. 50</p>
8.	Section 27 (as substituted by section 70(e) of Central Bank Act 1997)	<p>(a) Substitute the following subsection for subsection (2): 55</p> <p>“(2) Subsection (1) of this section does not apply to advertising for or otherwise soliciting deposits or other repayable funds from the public—</p>

Item	Provision affected	Amendment
5		(a) by the holder of a licence, the Bank, or a person to whom, because of subsection (4) of section 7 of this Act, subsection (1) of that section does not apply, or
10		(b) by a person to whom, because of section 8(2) of this Act, section 7(1) of this Act does not apply, or
15		(c) by a person authorised to carry on business in the State by the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992, or
20		(d) by a person on behalf of a person referred to in paragraph (a), (b) or (c) of this subsection.”;
		(b) In subsection (5), insert “or other repayable funds” after “deposits”.

PART 5

25 AMENDMENT OF INSURANCE (MISCELLANEOUS PROVISIONS) ACT 1985

Item	Provision affected	Amendment
30	1. Section 1	Substitute the following definition for the definition of “the Minister”: “ ‘the Minister’ means the Minister for Finance.”.
	2. Sections 2 and 3	Repeal the sections.
	3. Section 4	After “attorney” insert “or proxy”, wherever occurring.
	4. Section 6	Delete “, after consultation with the Minister for Finance,”.
35	5. Section 7	Delete “given after consultation with the Minister for Finance”.
40	6. Section 8	Substitute the following subsection for subsection (1): “(1) The memorandum and articles of association of the Company must be in a form, consistent with this Act, that is approved by the Minister.”.
	7. Section 9	In subsection (2), delete “, after consultation with the Minister for Finance,”.
45	8. Section 10	(a) In subsection (1), delete “after consultation with the Minister for Finance”; (b) in subsection (2), delete “after consultation with the Minister for Finance”; (c) in subsection (3), delete “after consultation with the Minister for Finance”;

Item	Provision affected	Amendment	
		(d) in subsection (4), delete “, after consultation with the Minister for Finance,”.	
9.	Section 14	(a) In subsection (1), delete “, with the consent of the Minister for Finance,”; (b) in subsection (3), insert “, or the Minister for Enterprise, Trade and Employment,” after “Minister”; (c) in subsection (4), delete “with the consent of the Minister for Finance”; (d) in subsection (6), insert “, or the Minister for Enterprise, Trade and Employment,” after “Minister” wherever occurring; (e) in subsection (7), delete “for Finance”; (f) in subsection (8), insert “, or the Minister for Enterprise, Trade and Employment,” after “Minister”.	5 10 15
10.	Section 15	(a) In subsection (1), delete “to him by the Minister for Finance”; (b) in subsection (2), delete “for Finance”.	20
11.	Section 17	Delete “, to such extent as may be sanctioned by the Minister for Finance,”.	

PART 6

AMENDMENT OF INSURANCE ACT 1989 25

Item	Provision affected	Amendment	
1.	Section 2	Insert the following definition after the definition of “the Court”: “ ‘EEA country’ means a country that is a member of the European Economic Area;”.	30
2.	Section 11	Substitute the following subsection for subsection (2): “(2) The Bank has a right to disclose any such return or document to the supervisory authority of another EEA country so long as the disclosure is not prohibited by law.”.	35
3.	Section 18	Substitute the following subsection for subsection (3): “(3) If the head office of an undertaking is located in another EEA country, the Bank shall notify the supervisory authority of that country before issuing a direction under this section in respect of the undertaking.”.	40

Item	Provision affected	Amendment
4. 5 10 15 20 25 30 35 40 45 50	Section 20	<p data-bbox="360 149 792 176">Substitute the following section for section 20:</p> <p data-bbox="360 197 894 275">“Qualifications, experience and fitness of directors, managers and authorised agents of insurers. 20.—(1) For the purposes of this section, a person holds a management position with an insurer if the person—</p> <ul style="list-style-type: none"> <li data-bbox="540 296 854 323">(a) is a director of the insurer, or <li data-bbox="540 344 894 415">(b) holds a management position with the insurer that is specified by the Bank, or <li data-bbox="540 436 894 485">(c) is the authorised agent of the insurer in the State. <p data-bbox="496 506 894 577">(2) The Bank may, by notice in writing, require an insurer to submit such information as the Bank requires concerning—</p> <ul style="list-style-type: none"> <li data-bbox="540 598 894 695">(a) the qualifications and experience of persons who hold management positions with the insurer, and <li data-bbox="540 716 894 764">(b) the fitness of those persons to hold those positions. <p data-bbox="496 785 894 863">(3) On being satisfied on reasonable grounds that a person holding a management position with an insurer—</p> <ul style="list-style-type: none"> <li data-bbox="540 884 894 955">(a) does not have the appropriate qualifications or adequate experience, or <li data-bbox="540 976 894 1031">(b) is not otherwise fit to hold the position, <p data-bbox="496 1052 894 1171">the Bank may direct that, while the person continues to hold the position, the insurer must take such of the measures specified in subsection (4) as the Bank notifies in writing to the insurer.</p> <p data-bbox="496 1192 894 1241">(4) The following measures are specified for the purposes of subsection (3):</p> <ul style="list-style-type: none"> <li data-bbox="540 1262 894 1333">(a) to refrain from taking on new business, or new business of a specified type or class; <li data-bbox="540 1354 894 1402">(b) to limit its premium income to a specified amount; <li data-bbox="540 1423 894 1495">(c) to refrain from making investments of a specified class or description; <li data-bbox="540 1516 894 1587">(d) to realise, within a specified period, investments of a specified class or description; <li data-bbox="540 1608 894 1745">(e) to maintain in the State assets of a value equal to the whole, or a specified proportion of, the amount of its liabilities in respect of business carried on in the State;

Item	Provision affected	Amendment	
		(f) to take such further measures as may be specified in the direction.	5
		(5) The Bank may from time to time vary or revoke a direction given under this section.	
		(6) If an insurer has its head office in another EEA country, the Bank shall notify the supervisory authority of that country before issuing a direction under this section in respect of the insurer.	10
		(7) On being satisfied on reasonable grounds that an insurer has not complied, or is not complying, with a direction under this section, the Bank may suspend or revoke the insurer's authorisation in respect of any class or part of a class of business in accordance with the procedures prescribed by section 58.	15
		(8) An insurer—	
		(a) shall notify the Bank in writing of every proposal to appoint a person to a management position with the insurer, and	20
		(b) shall not make the appointment if the Bank, within 30 days of being notified of the proposal, objects to the proposal on the ground that the person proposed to be appointed—	25
		(i) does not have the appropriate qualifications or adequate experience, or	
		(ii) is not otherwise fit to hold the position.	
		(9) A direction or objection of the Bank under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.	30
	Qualifications, experience and fitness of persons concerned in management of applicants for authorisations.	20A.—(1) For the purposes of this section, 'management position', in relation to an applicant for an authorisation, means—	35
		(a) a director, or	
		(b) a management position specified by the Bank, or	
		(c) an authorised agent.	
		(2) An applicant for an authorisation to carry on a specified class or description of insurance business shall provide the Bank with such information as the Bank requires concerning—	40
		(a) the qualifications and experience of persons who hold, or whom the applicant proposes to appoint, to management positions with the applicant, and	45
		(b) the fitness of those persons to hold those positions.	50
		(3) The Bank shall not grant an authorisation if it appears to the Bank that a person referred to in subsection (2)—	
		(a) does not have the appropriate qualifications or adequate experience to hold a management position with the applicant, or	55

Item	Provision affected	Amendment
5 10		<p style="text-align: center;">(b) is not otherwise fit to hold such a position.</p> <p>Provisions supplementary to sections 20 and 20A. 20B.—(1) If the head office of an insurer or an applicant for an authorisation is not located within the State, sections 20 and 20A apply only to persons who perform functions of the undertaking in the State.</p> <p style="text-align: center;">(2) The Bank is not liable in respect of any claim for damages arising directly or indirectly from the application of any of the provisions of section 20 or 20A.”.</p>
5. 15 20 25 30 35 40 45	Section 22	<p>Substitute the following subsection for subsection (1E):</p> <p>“(1E) The Bank may direct a company to stop carrying on the business referred to in subsection (1), by notice in writing either indefinitely or for such period as it may specify in the direction, in all or any of the following circumstances:</p> <p style="padding-left: 2em;">(a) if the company contravenes subsection (1)(b) or (1C),</p> <p style="padding-left: 2em;">(b) if information that is, to the knowledge of the company, false or misleading is included in a notice of the company given under subsection (1)(b) or (1C),</p> <p style="padding-left: 2em;">(c) if the Bank considers that, having regard to the risks insured or proposed to be insured by the company, the company is under capitalised, or</p> <p style="padding-left: 2em;">(d) if the Bank considers that one or more of the directors or the senior managers of the company are not fit and proper, or are not suitably qualified, to direct and manage the company’s business, or</p> <p style="padding-left: 2em;">(e) if the Bank considers that the company has not a sufficient number of fit and proper or suitably qualified employees in the State to carry on effectively the company’s business, or</p> <p style="padding-left: 2em;">(f) if the Bank has information showing that the company has engaged in unlawful activities, either within or outside the State.</p> <p>(1EA) A direction given by the Bank to a company under subsection (1E) does not absolve a company from performing its obligations in respect of the business of reinsurance carried on by it before that direction was given.”.</p>
6.	Section 31	Delete subsections (3), (5) and (7).
7. 50	Section 58	<p>(a) In subsection (3), substitute “all other EEA countries” for “any other Member State of the European Communities”;</p> <p>(b) delete subsection (4).</p>

PART 7

AMENDMENT OF CENTRAL BANK ACT 1989

Item	Provision affected	Amendment	
1.	Section 50 (as substituted by item 5 of Part 9 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)	In subsection (4), insert “or 268” after “section 233”.	5 10 15
2.	Section 77	<p>Substitute the following subsection for subsection (2):</p> <p>“(2) The Minister may give consent under subsection (1) only after consulting the Minister for Enterprise, Trade and Employment, and after being satisfied that the Bank’s proposed decision to approve or refuse its approval—</p> <p>(a) would be in the interests of proper and orderly regulation of banking, and</p> <p>(b) would be in the public interest, bearing in mind the effect of the transaction on the continued availability of financial services, both generally and on a social and geographical basis and on the capacity of the State to manage the State’s economy generally and in order to comply with its obligations under the law of the European Communities.”.</p>	20 25 30
3.	Section 101	<p>Substitute the following subsection for subsection (1):</p> <p>“(1) In approving rules of an existing exchange or for a proposed exchange, the Bank may impose conditions or requirements on the exchange.</p> <p>(1A) The Bank may, at any time after approving the rules of any such exchange—</p> <p>(a) impose further conditions or requirements on the exchange, or</p> <p>(b) amend or revoke any condition or requirement imposed under this subsection or subsection (1).</p> <p>(1B) The powers conferred on the Bank by subsections (1) and (1A) are exercisable only for the purposes of ensuring—</p> <p>(a) the prudent regulation of the exchange concerned, and</p> <p>(b) the protection of consumers of financial services, and</p> <p>(c) the effective and efficient regulation of the State’s financial system.</p>	35 40 45 50

Item	Provision affected	Amendment
5		<p>(1C) The Bank may extend a condition or requirement imposed on an exchange under subsection (1) or (1A) so that the condition or requirement also applies to either or both of the following:</p> <p>(a) all or any of the members of the exchange;</p> <p>(b) any company established in connection with a member's membership of the exchange.</p> <p>(1D) The Bank may not impose a condition or requirement under subsection (1) or (1A), or amend or extend such a condition or requirement, unless it—</p> <p>(a) has notified the exchange, and any member or company affected by the condition or requirement, or by the amendment or extension, of its intention to impose the condition or requirement, or make the amendment or extension, and</p> <p>(b) has given the exchange, and any such member or company, the opportunity to make representations to the Bank to show why the condition or requirement should not be imposed, or the amendment or extension should not be made.</p> <p>(1E) If securities created by the Minister could be the subject of dealings on an exchange, the Bank shall not impose a condition or requirement under subsection (1) or (1A) in relation to any such dealings without having notified the Minister of its intention to impose the condition or requirement.”.</p>
30	4. Section 117	<p>Substitute the following subsections for subsection (4):</p> <p>“(4) A person supervised by the Bank who—</p> <p>(a) fails to provide information in accordance with subsection (3)(a), or</p> <p>(b) fails to comply with a direction under subsection (3)(b), or</p> <p>(c) publishes, or issues a document that contains a reference to, a code of practice so as to suggest that the code has been issued or approved by the Bank when this is not the case,</p> <p>commits an offence.</p> <p>(4A) A person who is convicted of an offence under subsection (4) is liable—</p> <p>(a) on summary conviction, to a fine not exceeding €2,000, or</p> <p>(b) on conviction on indictment, to a fine not exceeding €40,000.</p> <p>(4B) A person who—</p> <p>(a) having been convicted of an offence under subsection (4)(a), continues to fail to provide information, or</p>
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Item	Provision affected	Amendment
5		<p>(b) employees and officers of that authority;</p> <p>(c) the members of any Board of that authority;</p> <p>(d) the Regulatory Authority;</p> <p>(e) members and officers of the Regulatory Authority and employees of the Bank.</p> <p>(1A) A person to whom this section applies is not liable in damages for anything done or omitted to be done in performing functions under this Act unless it is proved that the act was done, or omitted to be done in bad faith.”.</p>
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15	3.	Section 55 (as amended by item 7 of Part 19 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003)
20		In subsection (1), insert “and may, whenever appropriate, revoke the appointments of those persons” after “this Act”.
	4.	Section 65
		Repeal the section.
25	5.	Section 69
		<p>(a) In subsection (3), insert the following paragraph after paragraph (a):</p> <p style="padding-left: 40px;">“(aa) a person authorised by the Chief Executive of the Regulatory Authority;”;</p> <p>(b) Delete subsection (3)(d).</p>
30	6.	Second Schedule
		Repeal the Schedule.

PART 11

AMENDMENT OF INVESTMENT INTERMEDIARIES ACT 1995

Item	Provision affected	Amendment
35	1.	Section 2
40		<p>(a) In subsection (2), insert the following definition after the definition of “director”:</p> <p style="padding-left: 40px;">“ ‘financial institution’ means—</p> <p style="padding-left: 80px;">(a) an insurance undertaking as defined in Article 1(a) of Directive No. 92/49/EEC, or</p> <p style="padding-left: 80px;">(b) an assurance undertaking as defined in Article 1(a) of Directive No. 92/96/EEC, or</p> <p style="padding-left: 80px;">(c) a UCITS as defined in Article 1(2) of Directive No. 85/611/EEC (as amended), or</p>
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Item	Provision affected	Amendment	
		<p>(d) an investment firm as defined in Article 1(2) of Directive No. 93/22/EEC, or</p> <p>(e) any other undertaking the activities of which are similar to those of an undertaking referred to in subparagraphs (a) to (d) or the principal activity of which is to acquire holdings of financial assets;”;</p> <p>(b) In subsection (2), insert the following definition after the definition of “proposed investment business firm”:</p> <p>“ ‘publication’ includes publication on an Internet website;”;</p> <p>(c) In subsection (2), insert the following definition after the definition of “related undertakings”:</p> <p>“ ‘relevant collective investment scheme instrument’ means—</p> <p>(a) units or shares in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003), or</p> <p>(b) units in a unit trust, or</p> <p>(c) shares in an investment company, or</p> <p>(d) capital contributions to an investment limited partnership;”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
2.	Section 6	<p>Substitute the following subsection for subsection (1):</p> <p>“(1) The expenses incurred by the Minister in administering this Act are payable out of money provided by the Oireachtas.”.</p>	
3.	Section 22	<p>(a) In subsection (5), insert “, or a member or officer of the Regulatory Authority” after “the Bank”;</p> <p>(b) In subsection (6), insert “, or a member or officer of the Regulatory Authority” after “the Bank”;</p> <p>(c) In the definition of “committee of inspection” in subsection (6B), insert “or 268” after “section 233”;</p> <p>(d) In subsection (6B), substitute the following definition for the definition of “responsible authority”:</p> <p>“ ‘responsible authority’ means—</p> <p>(a) the Governor of the Bank, or</p> <p>(b) the Chief Executive of the Regulatory Authority, or</p>	<p>40</p> <p>45</p> <p>50</p> <p>55</p>

Item	Provision affected	Amendment
5		(c) any person to whom the Governor of the Bank or the Chief Executive of that Authority has delegated responsibility for appointing persons under this section.”.
4.	Section 26	<p data-bbox="363 275 888 300">Substitute the following subsections for subsection (1):</p> <p data-bbox="402 317 896 365">“(1) A person is a restricted activity investment product intermediary for the purposes of this Act if—</p> <p data-bbox="444 382 896 453">(a) the only investment business that the person is involved in is providing investment advice in relation to—</p> <p data-bbox="509 470 896 684">(i) receiving and transmitting orders for relevant collective investment scheme instruments, shares in a company that is listed on a stock exchange, bonds that are listed on a stock exchange, prize bonds, tracker bonds, insurance policies, or personal retirement savings accounts within the meaning of the Pensions Act 1990, or</p> <p data-bbox="509 701 896 749">(ii) acting as a deposit agent or as a deposit broker,</p> <p data-bbox="488 766 521 791">and</p> <p data-bbox="444 808 896 930">(b) in the course of performing an activity of the kind specified in paragraph (a), the person transmits orders only to an entity, or an entity of a class, specified in subsection (1A),</p> <p data-bbox="488 947 521 972">and</p> <p data-bbox="444 989 896 1083">(c) the person does not hold clients’ funds or securities in such a way as, in dealings with clients, to become indebted to those clients.</p> <p data-bbox="402 1100 896 1157">(1A) The following entities and classes of entities are specified for the purposes of subsection (1)(b):</p> <p data-bbox="444 1173 896 1268">(a) investment firms authorised in accordance with Directive 93/22/EEC of 10 May 1993 by a competent authority of another Member State of the European Communities;</p> <p data-bbox="444 1285 896 1356">(b) authorised investment business firms (other than restricted activity investment product intermediaries);</p> <p data-bbox="444 1373 896 1421">(c) member firms within the meaning of the Stock Exchange Act 1995;</p> <p data-bbox="444 1438 896 1533">(d) credit institutions authorised in accordance with Directives 77/780/EEC of 12 December 1977 and 89/646/EEC of 15 December 1989;</p> <p data-bbox="444 1549 896 1698">(e) in relation to investment business firms and credit institutions authorised to carry on business in a state other than a Member State, such branches of those firms or institutions as the supervisory authority approves from time to time;</p> <p data-bbox="444 1715 896 1837">(f) collective investment undertakings authorised under the law of a Member State of the European Communities to market units in collective investments to the public, and to the managers of such undertakings;</p>

Item	Provision affected	Amendment
		<p>(g) investment companies with fixed capital as defined in Article 15(4) of Council Directive 77/91/EEC of 13 December 1976 the securities of which are listed or dealt in on a regulated market in a Member State; 5</p> <p>(h) insurance undertakings;</p> <p>(i) the Prize Bond Company Limited, or any successor to it as operator of the Prize Bond scheme. 10</p> <p>(1B) A person does not cease to be a restricted activity investment product intermediary for the purposes of this Act only because the person—</p> <p>(a) accepts non-negotiable cheques or similar instruments made out to a body referred to in subsection (1A) in connection with receiving and transmitting orders, or 15</p> <p>(b) when acting as a deposit agent, accepts cash from a client for the client’s account with a credit institution, or 20</p> <p>(c) when providing services other than investment business services or investment advice, holds cash on behalf of clients, or</p> <p>(d) accepts cash from a client in circumstances to which section 25G applies when acting as an insurance intermediary, or 25</p> <p>(e) accepts cash from a client in circumstances to which section 25E applies when acting as a tied insurance agent.”. 30</p>
5.	Section 28	<p>Substitute the following section for section 28:</p> <p>“Obligations on product producers. 28.—(1) A product producer may not—</p> <p>(a) appoint an investment product intermediary to act on its behalf— 35</p> <p>(i) in receiving or transmitting orders for collective investment scheme instruments, or</p> <p>(ii) in receiving or transmitting orders for company shares or bonds, that are listed on a stock exchange, or 40</p> <p>(iii) in receiving or transmitting orders for prize bonds, or 45</p> <p>(iv) in receiving or transmitting orders for tracker bonds, or</p> <p>(v) in receiving or transmitting orders for insurance policies, or 50</p> <p>(vi) in receiving or transmitting orders for personal retirement savings accounts, or</p>

Item	Provision affected	Amendment
5		<p>(vii) when acting as a deposit agent or as a deposit broker,</p>
		<p>or</p>
		<p>(b) pay commission to an investment product intermediary, or</p>
10		<p>(c) accept any orders transmitted, or any insurance placed, by an investment product intermediary on behalf of a client,</p>
15		<p>unless to the best of the producer's knowledge, after having made reasonable enquiries, the investment product intermediary is appropriately qualified.</p>
		<p>(2) An investment product intermediary is appropriately qualified for the purpose of subsection (1) only if the intermediary—</p>
20		<p>(a) is a certified person, or</p>
25		<p>(b) is of good character and is in compliance with this Act and, where the product producer is an insurance undertaking, is also in compliance with the Insurance Acts.</p>
30		<p>(3) For the purposes of subsection (2), a product producer is entitled to assume that an investment product intermediary is in compliance with this Act and with the Insurance Acts if the intermediary is authorised—</p>
35		<p>(a) by the supervisory authority under section 10 or 13 to operate as an investment business firm, or</p>
40		<p>(b) by a competent authority in another Member State to undertake activities similar to those undertaken by such a firm.</p>
45		<p>(4) A product producer who has appointed an investment product intermediary to act as its agent for any purpose specified in subsection (1) shall monitor the activities of the intermediary so as to ensure that the intermediary complies with the requirements imposed by or under this Act on investment product intermediaries who are appointed under this section as agents for product producers.</p>
50		<p>(5) Whenever the supervisory authority so requests, a product producer who has appointed an investment product intermediary to act as its agent for any purpose specified in subsection (1) shall provide that authority with evidence in writing that the producer has complied with subsection (4).</p>

Item	Provision affected	Amendment
		<p>(6) A person who, for the purpose of obtaining an appointment of the kind referred to in section 27, gives information that the person knows or ought reasonably to know is false or misleading commits an offence. 5</p> <p>(7) A product producer shall not—</p> <p>(a) accept an order transmitted by an investment business firm on behalf of a client of the firm, or 10</p> <p>(b) accept money belonging to such a client, or</p> <p>(c) pay commission to the firm, 15</p> <p>unless the firm is an investment business firm—</p> <p>(d) that, to the best of the product producer’s knowledge and belief, complies with this Act and, if the firm is an insurance intermediary, also complies with the Insurance Acts, and 20</p> <p>(e) that is authorised under section 10 or is deemed to be authorised under section 26 or 63, and 25</p> <p>(f) to which the product producer has given an appointment in writing in accordance with Part IV that has not been terminated. 30</p> <p>(8) A product producer who contravenes subsection (7) commits an offence.</p> <p>(9) In this section—</p> <p>‘commission’ includes fee and reward.</p> <p>(10) This section applies to and in respect of investment intermediaries appointed before or after the commencement of <i>item 5 of Part 11 of Schedule 3 to the Central Bank and Financial Services Authority of Ireland Act 2004</i>.”. 35 40</p>
6.	Section 52	<p>Substitute the following subsection for subsection (6):</p> <p>“(6) If—</p> <p>(a) an authorised investment business firm maintains an account with a credit institution or a financial institution, and 45</p> <p>(b) the account contains money, or relates to investment instruments or documents of title, entrusted to or received by the firm for or on account of a client,</p> <p>the firm commits an offence if it fails to designate the account as a ‘section 52 account’ in all of its financial records. This subsection does not apply to an authorised investment business firm that is a certified person.”. 50</p>

Item	Provision affected	Amendment
7.	Section 53	<p data-bbox="363 149 870 174">Substitute the following subsections for subsection (1):</p> <p data-bbox="423 197 894 222">“(1) This section applies to the following persons:</p> <ul style="list-style-type: none"> <li data-bbox="444 245 721 270">(a) the supervisory authority; <li data-bbox="444 294 862 319">(b) employees and officers of that authority; <li data-bbox="444 342 894 367">(c) the members of any Board of that authority; <li data-bbox="444 390 729 415">(d) the Regulatory Authority; <li data-bbox="444 438 894 485">(e) members and officers of the Regulatory Authority and employees of the Bank. <p data-bbox="399 508 894 625">(1A) A person to whom this section applies is not liable in damages for anything done or omitted to be done in performing functions under this Act unless it is proved that the act was done, or omitted to be done in bad faith.”.</p>
8.	Section 58	<p data-bbox="363 659 870 684">Substitute the following subsections for subsection (1):</p> <p data-bbox="399 707 894 842">“(1) If the Bank grants approval under section 56, or consents to a proposed amendment to a memorandum or article of association or rules, it may, in the interests of the proper and orderly regulation and supervision of approved professional bodies or certified persons, also do all or any of the following:</p> <ul style="list-style-type: none"> <li data-bbox="444 865 894 932">(a) make its approval or consent subject to such conditions or requirements as it considers fit; <li data-bbox="444 955 894 1052">(b) impose conditions or requirements that relate to the affairs or operation of an associated undertaking or related undertaking; <li data-bbox="444 1075 894 1121">(c) amend or revoke conditions or requirements imposed under this subsection; <li data-bbox="444 1144 894 1220">(d) at any time after approving a professional body impose conditions or requirements on the body, including— <ul style="list-style-type: none"> <li data-bbox="509 1243 894 1339">(i) a requirement that the body amend any memorandum of association or articles of association of the body, and <li data-bbox="509 1362 894 1526">(ii) if the body has rules relating to the provision of investment business services or investment advice by certified persons, or the regulation and supervision of certified persons — a requirement that the body amend or revoke those rules. <p data-bbox="399 1549 894 1787">(1A) The Minister may, from time to time in the interests of the proper and orderly regulation and supervision of approved professional bodies or certified persons, issue guidelines to the Bank with respect to the imposition by the Bank of conditions and requirements under subsection (1). However, the Minister is required to obtain the consent of the Minister for Justice, Equality and Law Reform before issuing any such guidelines that relate to an approved body of lawyers.</p>

Item	Provision affected	Amendment
		<p>(1B) As soon as practicable after issuing guidelines under subsection (1A), the Minister shall arrange for notice of their issue to be published in <i>Iris Oifigiúil</i>. Failure to comply with this subsection does not of itself affect the validity of the guidelines concerned. 5</p> <p>(1C) When imposing a condition or requirement under subsection (1), or amending such a condition or requirement, the Bank shall comply with any guidelines issued to it under subsection (1A).”. 10</p>
9.	Section 64	<p>(a) In subsection (1), insert “and may, whenever appropriate, revoke the appointments of those persons” after “this Act”;</p> <p>(b) substitute the following subsection for subsection (4): 15</p> <p>“(4) In this section, ‘responsible authority’ means—</p> <p>(a) the Governor of the Bank, or</p> <p>(b) the Chief Executive of the Regulatory Authority, or 20</p> <p>(c) any person to whom the Governor of the Bank or the Chief Executive of that Authority has delegated responsibility for appointing persons under this section.”. 25</p>
10.	Section 71	<p>Substitute the following subsection for subsection (4):</p> <p>“(4) The Minister may lay before each House of the Oireachtas a report forwarded under subsection (2) if the Minister thinks it proper to do so having regard to the public interest and the rights of any person referred to in the report.”. 30</p>
11.	Section 74	Repeal the section.
12.	Section 78	<p>In subsection (3), substitute the following paragraph for paragraph (c): 35</p> <p>“(c) a person authorised by the Chief Executive of the Regulatory Authority;”.</p>
13.	Section 79	<p>Substitute the following subsection for subsection (1):</p> <p>“(1) A person who is found guilty of an offence under section 9, 10(16), 16(14), 19(1)(b), 21(9), 23(1), 23(15), 28(6) and (9), 30, 34(1), 34(3), 35(4), 36(6), 46(2), 52(3), 52(5), 52(6), 52(9), 54(6), 56(9), 61(14), 75(3), 78(2), 79(4), 79(7), 79(8) of, or paragraph 8(3) of the First Schedule to this Act is liable— 40</p> <p>(a) on summary conviction to a fine not exceeding €1,250 or, in the case of a natural person, to imprisonment for a term not exceeding 12 months, or both, or</p> <p>(b) on conviction on indictment, to a fine not exceeding €1,250,000 or, in the case of a natural person, to imprisonment for a term not exceeding 10 years, or both.”. 45 50</p>
14.	Second Schedule	Repeal the Schedule.

PART 12

AMENDMENT OF CONSUMER CREDIT ACT 1995

Item	Provision inserted	Amendment
5	1.	<p data-bbox="185 239 272 260">Section 2</p> <p data-bbox="402 239 902 287">(a) In subsection (1), insert the following definition after the definition of “borrower”:</p> <p data-bbox="509 302 902 350">“ ‘business’ includes trade and profession;”;</p> <p data-bbox="402 373 902 422">(b) in subsection (1), substitute the following definition for the definition of “consumer”:</p> <p data-bbox="509 436 716 457">“ ‘consumer’ means—</p> <p data-bbox="529 472 902 520">(a) a natural person acting outside the person’s business, or</p> <p data-bbox="529 535 902 604">(b) any person, or person of a class, declared to be a consumer in an order made under subsection (9);”;</p> <p data-bbox="402 627 902 676">(ba) in subsection (1), to substitute the following definition for the definition of “housing loan”:</p> <p data-bbox="509 699 902 842">“ ‘housing loan’ means an agreement for the provision of credit on the security of a mortgage of a freehold or leasehold estate or interest in land where the loan is made to the person to whom the credit is provided—</p> <p data-bbox="548 856 902 999">(a) for the purpose of enabling that person to have a house constructed on the land as the principal residence of that person or that person’s dependants, or</p> <p data-bbox="548 1014 902 1129">(b) for the purpose of enabling that person to improve a house that is already used as the principal residence of that person or that person’s dependants, or</p> <p data-bbox="548 1144 902 1287">(c) for the purpose of enabling that person to purchase a house that is already constructed on the land for use as the principal residence of that person or that person’s dependants, or</p> <p data-bbox="548 1302 902 1396">(d) for the purpose of refinancing a loan made for a purpose specified in paragraph (a), (b) or (c);”;</p> <p data-bbox="402 1419 902 1488">(c) in subsection (1), substitute the following definition for the definition of “mortgage intermediary”:</p> <p data-bbox="509 1503 902 1598">“ ‘mortgage intermediary’ means a person (other than a mortgage lender or credit institution) who, in return for commission or some other form of consideration—</p> <p data-bbox="548 1612 902 1707">(a) arranges, or offers to arrange, for a mortgage lender to provide a consumer with a housing loan, or</p> <p data-bbox="548 1722 902 1837">(b) introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with such a loan;”;</p>

Item	Provision affected	Amendment
		<p>(d) in subsection (1), substitute the following definition for the definition of “mortgage lender”:</p> <p style="padding-left: 40px;">“ ‘mortgage lender’ means a person who carries on a business that consists of or includes making housing loans;”;</p> <p>(e) insert the following subsection after subsection (8):</p> <p style="padding-left: 40px;">“(9) The Minister for Finance may, by order notified in <i>Iris Oifigiúil</i>, declare any specified person, or any person of a specified class of persons, to be a consumer for the purposes of the definition of ‘consumer’ in subsection (1).”.</p>
2.	Section 149A (as inserted by item 43 of Part 21 of the Central Bank and Financial Services Authority of Ireland Act 2003)	<p>(a) Substitute “regulated business” for “bureau de change business”, wherever occurring;</p> <p>(b) substitute the following subsection for subsection (14):</p> <p style="padding-left: 40px;">“(14) In this section—</p> <p style="padding-left: 80px;">‘bureau de change business’ has the same meaning as in section 28 of the Central Bank Act 1997 (as substituted by <i>section 22 of the Central Bank and Financial Services Authority of Ireland Act 2004</i>);</p> <p style="padding-left: 80px;">‘service’ means any service provided by the holder of an authorisation to a customer in relation to a bureau de change business or a money transmission business carried on by that holder;</p> <p style="padding-left: 80px;">‘money transmission business’ has the same meaning as in section 29 of the Central Bank Act 1997 (as substituted by <i>section 22 of the Central Bank and Financial Services Authority of Ireland Act 2004</i>).”.</p>

PART 13

AMENDMENT OF NETTING OF FINANCIAL CONTRACTS ACT 1995

Item	Provision inserted	Amendment
1.	Section 1	<p>In the definition of “financial contracts”, substitute the following paragraph for paragraph (g):</p> <p style="padding-left: 40px;">“(g) contracts designated by regulations made under section 3.”.</p>

PART 14

AMENDMENT OF CREDIT UNION ACT 1997

Item	Provision affected or inserted	Amendment
5	1. Sections 37A, 37B, 37C, 37D, 37E and 37F	<p data-bbox="355 264 781 289">Insert the following sections after section 37:</p> <p data-bbox="355 310 483 394">“Member to receive written notice of loan approval.</p> <p data-bbox="500 310 896 453">37A.—(1) On approving a loan in accordance with section 36 or 37, a credit union shall, in writing, notify the member who applied for the loan of the approval and of any time limit within which the approval will expire.</p> <p data-bbox="500 474 896 596">(2) A notice under subsection (1) may be in a form that, when endorsed by the member on accepting a loan offered by the credit union, constitutes a credit agreement for the purposes of sections 37B and 37C.</p> <p data-bbox="355 617 483 739">Credit agreement in respect of loans exceeding €200.</p> <p data-bbox="500 617 896 688">37B.—(1) If the amount of a loan approved by a credit union exceeds €200, the credit union shall ensure that—</p> <p data-bbox="540 709 896 831">(a) a credit agreement is entered into in writing and signed by the member concerned and by or on behalf of all other parties to the agreement, and</p> <p data-bbox="540 842 896 976">(b) a copy of the agreement—</p> <p data-bbox="602 877 896 976">(i) is handed personally to the member immediately after the agreement is entered into, or</p> <p data-bbox="602 997 896 1096">(ii) is delivered or sent to the member within 10 days after the agreement is entered into, and</p> <p data-bbox="540 1106 896 1274">(c) any contract of guarantee relating to the loan is in writing and signed by the guarantor and by or on behalf of all other parties to the agreement, and a copy of the guarantee and the agreement—</p> <p data-bbox="602 1285 896 1383">(i) is handed personally to the guarantor immediately after the contract is entered into, or</p> <p data-bbox="602 1404 896 1503">(ii) is delivered or sent to the guarantor within 10 days after the contract is entered into.</p> <p data-bbox="500 1524 896 1575">(2) For the purposes of this section, a contract of guarantee—</p> <p data-bbox="540 1593 896 1644">(a) includes the indemnity referred to in section 35(1), and</p> <p data-bbox="540 1665 896 1736">(b) may form part of the relevant agreement or may be in a separate document.</p> <p data-bbox="500 1757 896 1839">(3) A credit union that makes a loan without having complied with subsection (1) commits an offence.</p>

Item	Provision affected or inserted	Amendment	
		<p>(4) If a credit union is found guilty of an offence against subsection (3), the following provisions apply:</p> <p>(a) the credit union is taken to have waived all interest agreed to be paid by the member in respect of the loan;</p> <p>(b) the member, or the member's personal representative, is entitled to recover as a debt, by proceedings brought in a court of competent jurisdiction, any interest paid in respect of the loan.</p>	<p>5</p> <p>10</p> <p>15</p>
	Contents of credit agreements.	<p>37C.—(1) When entering into a credit agreement with a member, a credit union shall ensure that it contains a statement setting out the following particulars:</p> <p>(a) the name and address of each party to the agreement;</p> <p>(b) the amount of the loan provided under the agreement and the total amount payable in respect of the loan;</p> <p>(c) details of the security (if any) given in respect of the loan;</p> <p>(d) the date or dates on which the loan is to be provided (unless unascertainable at the time of the agreement);</p> <p>(e) the number of repayment instalments under the agreement and amount of each of those instalments;</p> <p>(f) the date, or the method of determining the date, on which each repayment instalment is payable;</p> <p>(g) the rate of interest charged in respect of the loan and the relevant APR;</p> <p>(h) the circumstances in which that APR may be amended;</p> <p>(i) any charges that, although not included in the calculation of the APR, must be paid by the member in specified circumstances;</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>

Item	Provision affected or inserted	Amendment
5 10 15 20 25 30 35 40 45		<p>(j) the date on which the loan expires;</p> <p>(k) the manner in which the member can terminate the agreement before the final repayment instalment is payable and the cost to the member of terminating the agreement;</p> <p>(l) any cost or penalty that the member may incur for failing to comply with the agreement.</p> <p>(2) The credit union shall also ensure that the agreement specifies a cooling-off period under which the member—</p> <p>(a) has a right to withdraw from the agreement without penalty if the member gives to the credit union a written notice to that effect within 10 days after the date of receiving a copy of the agreement, or</p> <p>(b) may indicate that the member does not wish to exercise the right.</p> <p>(3) The indication referred to in subsection (2)(b) must be in the form of statement signed by the member. The member's signature must be separate from, and additional to, the member's signature to the agreement.</p> <p>(4) A credit union that fails to comply with subsection (1) or (2) commits an offence.</p> <p>37D.—(1) A credit union shall not enter into a credit agreement with a member, unless the agreement and the notice referred to in section 37A (1) display prominently on their respective front pages, in a form approved by the Bank, the following information:</p> <p>(a) the amount of the loan;</p> <p>(b) the period of the agreement;</p> <p>(c) the number of repayment instalments;</p> <p>(d) the total amount repayable to the credit union;</p> <p>(e) the cost of the loan to the member;</p>

Notice of important information to be included in credit agreements.

Item	Provision affected or inserted	Amendment
		<p>(f) the APR in respect of the loan;</p> <p>(g) particulars of the cooling-off period. 5</p> <p>(2) A credit union that contravenes subsection (1) commits an offence.</p> <p>Definition and calculation of 'APR' for the purposes of sections 37C and 37D. 37E.—(1) For the purposes of sections 37C and 37D—</p> <p>'APR', in relation to a credit agreement entered into between a credit union and a member, means the annual percentage rate of charge. 10</p> <p>(2) The APR specified in a credit agreement must be that rate, on an annual basis that equalises the present value of all commitments (loans, repayments and charges), future or existing, agreed by the credit union and the member concerned, calculated in accordance with the mathematical formula set out in Annex II to the European Communities (Consumer Credit) Regulations 2000 (S.I. No. 294 of 2000) as in force from time to time. 15 20</p> <p>Regulations for the purposes of sections 37A-37D. 37F.—The Minister may make regulations under section 182 as to the form and content of credit agreements and, for that purpose, may amend or modify sections 37A, 37B, 37C or 37D.”. 25</p>
2.	Section 114 (as amended by item 77 of Part 24 of the Central Bank and Financial Services Authority of Ireland Act 2003)	<p>(a) In subsection (1)(a), substitute “the Minister for Enterprise, Trade and Employment” for “the Minister”;</p> <p>(b) in subsection (1)(b), substitute “that Minister” for “the Minister”.</p> <p>30</p>

Item	Provision affected or inserted	Amendment
3.	Section 125	<p>Insert the following subsection after subsection (8):</p> <p>“(9) Nothing in this Part or in a credit union’s rules prevents the Financial Services Ombudsman from investigating and adjudicating a complaint made against a credit union under Part VIIB of the Central Bank Act 1942 about the provision of, or the failure to provide, a financial service, so long as the complaint—</p> <p>(a) falls within the jurisdiction of that Ombudsman under that Part, and</p> <p>(b) does not relate to a matter that involves only the governance of the credit union.”.</p>
4.	Section 126	<p>Insert the following subsections after subsection (5):</p> <p>“(6) The Financial Services Ombudsman may, if satisfied that the circumstances make it appropriate to do so, deal with a dispute that would, but for subsection (3), be a complaint in respect of which that Ombudsman would have jurisdiction under Part VIIB of the Central Bank Act 1942.</p> <p>(7) If the Financial Services Ombudsman elects to deal with a dispute as provided by subsection (6), subsection (3) ceases to apply to the dispute.”.</p>
5.	Section 127	Delete the section.

PART 15

AMENDMENT OF INVESTOR COMPENSATION ACT 1998

Item	Provision affected or inserted	Amendment
1.	Section 2	<p>(a) In subsection (1), insert the following definition after the definition of “Act of 1995”:</p> <p>“ ‘administration of collective investment schemes’ includes—</p> <p>(a) the performance of valuation services and fund accounting services, and</p> <p>(b) acting as a transfer agent or registration agent for such schemes;”;</p> <p>(b) in subsection (1), substitute the following definition for the definition of “administrator”:</p> <p>“ ‘administrator’, in relation to an investment firm, means an administrator of the firm appointed under section 33 or 33A;”;</p>

Item	Provision affected or inserted	Amendment	
		<p>(c) in subsection (1), insert the following definition after the definition of “close relative”:</p> <p>“ ‘Companies Acts’ means the Companies Act 1963 as amended from time to time, and includes all Acts that are to be construed together with that Act as one Act;”;</p> <p>(d) in subsection (1), insert the following definition after the definition of “Minister”:</p> <p>“ ‘operator’, in relation to an investor compensation scheme approved under section 25, means the person responsible for operating the scheme;”;</p> <p>(e) substitute the following subsection for subsection (5):</p> <p>“(5) A firm is not an investment business firm, or authorised as such, for the purposes of this Act if—</p> <p>(a) the only activity that the firm is authorised to carry on under the Investment Intermediaries Act 1995 is the administration of collective investment schemes, and</p> <p>(b) the firm is not an investment firm within the meaning of the Investor Compensation Directive.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
2.	Section 9	<p>In subsection (4)(c), substitute the following subparagraph for subparagraph (iii):</p> <p>“(iii) an authorised officer appointed under section 17A of the Central Bank Act 1971, or”.</p>	
3.	Section 19	<p>In subsection (3), insert “the operator of” after “by”.</p>	35
4.	Section 20	<p>Insert the following subsections after subsection (2):</p> <p>“(3) The Company is responsible only for the expenses of an administrator that are properly incurred in the course of performing the administrator’s functions under this Act.</p> <p>(4) The Company is not responsible for expenses that an administrator of an investment firm incurs in respect of functions that the administrator performs contemporaneously with functions that the administrator performs as liquidator of the firm. It makes no difference that the functions performed as liquidator also relate to the performance of functions as administrator of the firm.”.</p>	<p>40</p> <p>45</p>
5.	Section 21	<p>In subsection (3)(b), substitute “Investor Compensation Directive” for “Investment Services Directive”.</p>	50
6.	Section 25	<p>In subsection (6), substitute the following paragraph for paragraph (c):</p> <p>“(c) as to the probity and competence of each of the directors and other persons concerned in the management of the proposed scheme,”.</p>	55

Item	Provision affected or inserted	Amendment
5	7. Section 27	In subsection (3)(a), insert “the operator of” after “the Company or to”.
10 15 20 25	8. Section 32	<p>(a) In subsection (1), substitute “the operator of” for “the person responsible for administering”;</p> <p>(b) in subsection (1)(b), substitute the following paragraph for paragraph (b):</p> <p style="padding-left: 40px;">“(b) a court has made a ruling (other than a decision under the Companies Acts appointing an examiner or provisional liquidator),”;</p> <p>(c) substitute the following subsection for subsection (2):</p> <p style="padding-left: 40px;">“(2) If the supervisory authority is satisfied that an investor was, for good reason, unable to make an application for a payment under section 34 within the period stipulated by the Company, or by the operator of the compensation scheme, the supervisory authority shall direct the Company or operator to treat the application as if it were made within the stipulated period.”.</p>
30 35 40 45 50 55	9. Section 33	<p>(a) Insert the following subsection after subsection (1):</p> <p style="padding-left: 40px;">“(1A) The supervisory authority may appoint an administrator under subsection (1) only with the agreement of the Company.”.</p> <p>(b) Substitute the following subsections for subsection (3):</p> <p style="padding-left: 40px;">“(3) The administrator shall deliver to the Company, or, where appropriate, to the operator of the compensation scheme concerned—</p> <p style="padding-left: 80px;">(a) a statement, or</p> <p style="padding-left: 80px;">(b) if an interim statement is delivered under subsection (3B), a final statement,</p> <p style="padding-left: 40px;">specifying the names of eligible investors and the net loss (if any) and the compensatable loss (if any) of each of those investors.</p> <p style="padding-left: 40px;">(3A) As a prelude to complying with subsection (3), the administrator may, if the Company or the operator of the relevant compensation scheme so agrees, deliver an interim statement specifying names of eligible investors and the estimated net losses (if any) and the estimated compensatable loss (if any) of each of those investors.</p> <p style="padding-left: 40px;">(3B) On, or as soon as practicable after, delivering a statement in accordance with subsection (3) or (3A), the administrator shall deliver a copy of the statement to the supervisory authority.”.</p>

Item	Provision affected or inserted	Amendment
10.	Section 33A	<p data-bbox="516 176 930 203">Insert the following section after section 33:</p> <p data-bbox="516 222 1057 392">“Appointment of liquidator or official assignee as administrator. 33A.—If the Court has appointed a liquidator or the official assignee in respect of an investment firm, it may also appoint the liquidator or official assignee as administrator of the firm, but only as a result of a proposal made by the supervisory authority with the agreement of the Company.”.</p>
11.	Section 34	<p data-bbox="560 420 1057 489">(a) In subsection (2), substitute “the operator of the compensation scheme” for “that compensation scheme”;</p> <p data-bbox="560 512 1057 562">(b) substitute the following subsection for subsection (3):</p> <p data-bbox="667 585 1057 940">“(3) If the administrator has delivered an interim statement in accordance with section 33(3A), the Company or operator of the compensation scheme concerned may make provisional compensation payments under this section on the basis of that statement. If, in relation to an eligible investor, the amount of compensation paid on the basis of that statement is less than that specified in the final statement delivered in accordance with section 33(3), the Company or operator of the compensation scheme concerned shall make a further compensation payment to the investor in respect of the outstanding balance.”;</p> <p data-bbox="560 963 1057 1033">(c) in subsection (4), substitute “the operator of the compensation scheme” for “the relevant compensation scheme”;</p> <p data-bbox="560 1056 1057 1125">(d) in subsection (5), substitute “the operator of a compensation scheme approved” for “a compensation scheme approved of”;</p> <p data-bbox="560 1148 1057 1199">(e) insert the following subsection after subsection (7):</p> <p data-bbox="667 1222 1057 1465">“(8) The Company or the operator of the compensation scheme concerned may appeal to the Court against a statement of compensatable loss delivered in accordance with section 33(3) or 33(3A) on the ground that the loss has not been properly calculated in accordance with section 30. However, the right conferred by this subsection may be exercised only after consultation with the supervisory authority.”.</p>
12.	Section 35	<p data-bbox="560 1491 1057 1560">(a) In subsection (1), substitute “the operator of a compensation scheme approved” for “a compensation scheme approved of”;</p> <p data-bbox="560 1583 1057 1652">(b) In subsection (1), substitute “the Company or operator” for “the Company or compensation scheme”;</p> <p data-bbox="560 1675 1057 1745">(c) In subsection (2)(a), substitute “the operator of a compensation scheme approved” for “a compensation scheme approved of”;</p>

Item	Provision affected or inserted	Amendment
5		(d) in subsection (5), substitute “the operator of an investor compensation scheme approved” for “an investor compensation scheme approved of”;
10		(e) in subsection (5), substitute “the Company or operator” for “the company or compensation scheme”;
15		(f) insert the following subsection after subsection (5):
15		“(5A) If—
15		(a) an eligible investor proves a claim in the liquidation proceedings referred to in subsection (5), and
20		(b) the amount proved exceeds the amount of compensation paid by the Company, or by the operator of a compensation scheme approved under section 25,
25		the claim of the investor and the subrogated claim of the Company, or operator of the compensation scheme, for the amount of the excess rank equally in those proceedings and are to be paid proportionately. If the assets are insufficient to meet those claims, they are to abate in equal proportions.”.
30		
35		(g) in subsection (6), substitute “the operator of an investor compensation scheme approved” for “an investor compensation scheme approved of”;
40		(h) in subsection (6), substitute “the Company or operator” for “the company or compensation scheme”;
40		(i) insert the following subsection after subsection (6):
45		“(6A) If—
45		(a) an eligible investor proves a claim under a bond or policy of professional indemnity insurance referred to in subsection (6), and
50		(b) the amount proved exceeds the amount of compensation paid by the Company, or by the operator of a compensation scheme approved under section 25,
55		the claim of the investor and the subrogated claim of the Company, or operator of the compensation scheme, for the amount of the excess rank equally in those proceedings and are to be paid proportionately. If the assets are insufficient to meet those claims, they are to abate in equal proportions.”.
60		

Item	Provision affected or inserted	Amendment
13.	Section 36	<p data-bbox="516 178 950 199">Substitute the following section for section 36:</p> <p data-bbox="516 220 641 325">“Provisions relating to investment product intermediaries.</p> <p data-bbox="657 220 1055 409">36.—(1) A product producer from whom an investment product intermediary holds a valid written appointment shall, in respect of each eligible investor to whom the Company is liable to make a payment in respect of the intermediary under section 34, pay to the Company an amount calculated as follows:</p> $A = ICL \times \frac{RAV}{INL}$ <p data-bbox="657 504 738 525">where—</p> <p data-bbox="706 556 1055 598">‘A’ represents the amount to be calculated;</p> <p data-bbox="706 619 1055 661">‘ICL’ represents the eligible investor’s compensatable loss;</p> <p data-bbox="706 693 1055 955">‘RAV’ represents the amount of client money or the value of investment instruments forming part of the net loss of the eligible investor that were entrusted by the investor to an investment product intermediary for transmission to an identifiable product producer from whom the intermediary held a valid written appointment when the money was, or the investment instruments were, so entrusted;</p> <p data-bbox="706 976 1055 1018">‘INL’ represents the net loss of the eligible investor.</p> <p data-bbox="657 1050 1055 1186">(2) Product producers are to be subrogated to the Company with respect to claims of the Company against an investment firm in relation to money that product producers have paid to the Company under this section.</p> <p data-bbox="657 1218 1055 1281">(3) Nothing in a contract can affect the liability of a product producer under this section.</p> <p data-bbox="657 1312 1055 1428">(4) The Company may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount payable to the Company under subsection (1).”.</p>
14.	Section 39	<p data-bbox="516 1459 1055 1501">In subsection (2), substitute “the operator of that compensation scheme” for “that investor compensation scheme”.</p>

MISCELLANEOUS AMENDMENTS TO OTHER EUROPEAN COMMUNITIES
REGULATIONS ADMINISTERED BY THE BANK

PART 1

5 AMENDMENT OF EUROPEAN COMMUNITIES (CONSOLIDATED
SUPERVISION OF CREDIT INSTITUTIONS) REGULATIONS 1992 (S.I. No.
396 OF 1992)

Item	Provision affected	Amendment
10	1. Regulation 2	<p data-bbox="402 436 898 510">(a) In subsection (1), substitute the following definition for the definition of “associated enterprise”:</p> <p data-bbox="506 527 898 573">“ ‘associated enterprise’, in relation to a credit institution, means—</p> <p data-bbox="548 590 898 636">(a) a company in respect of which the institution holds—</p> <p data-bbox="613 653 898 751">(i) not less than 20 per cent of the nominal value of the company’s equity share capital, or</p> <p data-bbox="613 768 898 842">(ii) not less than 20 per cent of the voting shares of the company,</p> <p data-bbox="591 858 613 884">or</p> <p data-bbox="548 900 898 947">(b) a subsidiary company of the institution, or</p> <p data-bbox="548 963 898 1010">(c) a holding company of the institution, or</p> <p data-bbox="548 1026 898 1073">(d) if the institution is a subsidiary company of another company—</p> <p data-bbox="613 1089 854 1115">(i) the other company, or</p> <p data-bbox="613 1131 898 1178">(ii) any other subsidiary of the other company,</p> <p data-bbox="591 1194 613 1220">or</p> <p data-bbox="548 1236 898 1283">(e) an associated company of the institution,</p> <p data-bbox="591 1299 613 1325">or</p> <p data-bbox="548 1341 898 1566">(f) a partnership in which the institution has an interest, and whose business is or, at the relevant time, was, in the opinion of the Bank, materially relevant to any inspection of the institution being carried out or proposed to be carried out under this section;”;</p> <p data-bbox="402 1583 898 1629">(b) In subsection (1), insert the following definitions after the definition of “the Directive”:</p> <p data-bbox="506 1646 898 1724">“ ‘holding company’ has the meaning given by section 2 of the Central Bank Act 1942;</p> <p data-bbox="506 1740 898 1818">‘subsidiary company’ has the meaning given by section 2 of the Central Bank Act 1942.”.</p>

Item	Provision affected	Amendment
2.	Regulation 4	<p>Substitute the following regulation:</p> <p>“4. (1) A reference to functions in sections 17A and 18 of the Act of 1971 (as respectively substituted by item 2 of Part 6 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003 and amended by section 37 of the Central Bank Act 1989) includes a reference to any function imposed on the Bank by these Regulations and the Directive.</p> <p>(2) In relation to any investigation or inspection carried out, or any information, document, report or other material or explanation required, by the Bank for the purposes of performing a function imposed on it by these Regulations or the Directive, the Bank has and may exercise the same powers as are conferred on the Bank by section 41 of the Building Societies Act 1989 in relation to—</p> <p>(a) investigating or inspecting the state and conduct of the business of a building society, or a corporate body that is a subsidiary or associated body of a society, or any particular aspect of that business, or</p> <p>(b) requiring a society or other body corporate to provide the Bank with information, documents, reports or other material or explanations under section 41(2) of that Act.”.</p>

PART 2

AMENDMENT OF EUROPEAN COMMUNITIES (CROSS-BORDER CREDIT TRANSFERS) REGULATIONS 2003 (S.I. No. 231 OF 2003)

Item	Provision affected	Amendment
1.	Regulation 2	<p>Insert the following definition after the definition of “financial institution”:</p> <p>“ ‘Financial Services Ombudsman’ means the Financial Services Ombudsman holding office as such under Part VIIB of the Central Bank Act 1942 or acting in that office;”.</p>
2.	Regulation 14	<p>Substitute the following regulation:</p> <p>“14.—The Financial Services Ombudsman is responsible for investigating and adjudicating a dispute arising from the application of these Regulations if the dispute is between—</p> <p>(a) an originator and the originator’s institution, or</p> <p>(b) a beneficiary and the beneficiary’s institution.”.</p>

PART 3

AMENDMENT OF EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 1992 (S.I. No. 211 OF 1992)

5	Item	Provision affected	Amendment
	1.	Regulation 98	<p>(a) In paragraph (5), substitute “(4)” for “(1)”;</p> <p>(b) in paragraph (6), substitute “(3), (4) and (5)” for “(3) and (4)”.</p>

10

SCHEDULE 5

Section 32.

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation: Schedule 5

1. In this Schedule, “the Bank” means the Central Bank and Financial Services Authority of Ireland, and includes the Irish Financial Services Regulatory Authority performing the functions or exercising the powers of that Bank in accordance with section 33C of the Central Bank Act 1942.

Authorisations to carry on bureau de change business under Part V of the Central Bank Act 1997

2. (1) An authorisation having effect under Part V of the Central Bank Act 1997 immediately before the commencement of section 22 of this Act continues to have effect under that Part as substituted by that section and as if the substituted Part had been in force when the authorisation was granted.

(2) Any action taken under Part V of the Central Bank Act 1997 before the commencement of section 22 of this Act and not completed before that commencement may, if it could be taken under that Part as substituted by that section, be continued or completed under that Part as so substituted.

(3) In *subparagraph (2)*, the reference to action taken includes (but is not limited to) proceedings (whether civil or criminal) taken before a court.

Savings for certain directions and requirements given or made by Bank

3. If—

(a) a direction or requirement has been given or made by the Bank or the Regulatory Authority under a provision of an Act or statutory instrument substituted or amended by *Schedule 1* or *2*, and

(b) the direction or requirement has not been complied with, withdrawn or otherwise disposed of before the commencement of the substituted provision or the amendment,

the provision continues to have effect in relation to the direction or requirement as if the substituted provision or the amendment had not commenced.

Savings for certain proceedings pending before the High Court

4. If any appeal or other proceeding is pending before the High Court under a provision of an Act or statutory instrument substituted or amended by *Schedule 1* or *2* immediately before the commencement of the substituted section or the amendment, the High Court may hear and determine the appeal or other proceeding as if that section or amendment had not commenced.

Saving for certain pending criminal proceedings

5. (1) If any proceedings for an offence under section 70 of the Stock Exchange Act 1995—

(a) were pending immediately before the commencement of *item 14* of *Part 4* of *Schedule 1* to this Act, or

(b) could have been brought under that section before that commencement,

the proceedings may be prosecuted and disposed of, or may be brought, prosecuted and disposed of, under that section as if that item had not commenced.

(2) If any proceedings for an offence under section 79 of the Investment Intermediaries Act 1995—

(a) were pending immediately before the commencement of *item 13* of *Part 11* of *Schedule 3* to this Act, or

(b) could have been brought under that section before that commencement,

the proceedings may be prosecuted and disposed of, or may be brought, prosecuted and disposed of, under that section as if that item had not commenced.

Insurance risks

6. Section 3 of the Insurance Act 1964 (as amended by *item 1* of *Part 3* of *Schedule 3* to this Act) extends to risks arising under insurance policies in force immediately before the commencement of that item.

Exemptions granted by Bank

7. If—

(a) an exemption granted by the Bank under a provision that is substituted or amended by a provision of *Schedule 3* to this Act had not ceased to have effect before the commencement of the substituted or amended provision, and

(b) the exemption could be granted under the substituted or amended provision,

the exemption continues to have effect as if it had been granted under the substituted or amended provision.

Notices given by Bank

8. If—

5 (a) any notice given, served or issued by the Bank under a provision of an Act substituted or amended by a provision of *Schedule 3* to this Act had not ceased to have effect before the commencement of the substituted or amended provision, and

10 (b) the notice could be given, served or issued under the substituted or amended provision,

the notice continues to have effect as if it had been given, served or issued under the substituted or amended provision.

15 *Conditions or requirements imposed by or under substituted or amended provision*

9. If—

(a) a condition or requirement has been imposed under a provision of an Act substituted or amended by a provision of *Schedule 3* to this Act, and

20 (b) the condition or requirement has not ceased to have effect before the commencement of the substituted or amended provision, and

(c) the condition or requirement could be imposed under the substituted or amended provision,

25 the condition or requirement continues to have effect under the substituted or amended provision.

Approvals and consents given under certain substituted or amended provisions

10. If—

30 (a) an approval or consent given under a provision that is substituted or amended by a provision of *Schedule 3* to this Act has effect immediately before the commencement of the substituted or amended provision, and

35 (b) the approval or consent could be given under the substituted or amended provision,

the approval or consent continues to have effect under the substituted or amended provision.

Applications pending under certain substituted or amended provisions

11. If—

- (a) an application has been made for an authorisation under a provision that is substituted or amended by a provision of *Schedule 3* to this Act before the commencement of the substituted or amended provision, and
- (b) the application could be made under the substituted or amended provision, the application has effect as if it had been made under the substituted or amended provision. 5

Obligations under substituted or amended provisions

12. If—

- (a) a person was under an obligation to comply with a provision substituted or amended by *Schedule 3* to this Act immediately before the commencement of the substituted or amended provision, and 10
- (b) the substituted or amended provision provides for the imposition of a similar obligation, 15

the obligation continues to subsist under the substituted or amended provision.

Amendments to Investor Compensation Act 1998 to apply to pending applications

13. The amendments made to the Investor Compensation Act 1998 by *Part 15* of *Schedule 3* to this Act apply to and in respect of applications for payments made under that Act and not disposed of before those amendments took effect. 20

Transfer of employment to Financial Services Ombudsman’s Bureau of certain persons employed in voluntary schemes 25

14. (1) The Minister for Finance may, by order notified in *Iris Oifigiúil*, transfer the employment of persons employed in a voluntary scheme to the Financial Services Ombudsman’s Bureau subject to such conditions (conditions as to pay and allowances, leave and superannuation) as are specified in the order. 30

(2) A person’s employment may be transferred under *subparagraph (1)* only with the person’s consent.

(3) In this paragraph, “voluntary scheme” means a scheme that, before the commencement of Chapter 3 of Part VIIB of the Central Bank Act 1942 (as inserted by *section 12* of this Act), provided for the mediation, investigation or adjudication of consumer complaints against financial service providers. 35

Power to make regulations to deal with savings and transitional issues

15. (1) The Minister for Finance may make regulations containing provisions of a savings or transitional nature consequential on the enactment of this Act. 40

(2) Regulations made under this paragraph may provide for any such savings or transitional provision to come into operation on the date of passing of this Act or a later day.

(3) To the extent to which regulations provide for any such savings or transitional provision to come into operation on and from a day that is earlier than the date on which the regulations are notified in *Iris Oifigiúil*, the provision does not operate—

- 5 (a) to affect, in a manner prejudicial to any person (other than
 the State or an authority of the State), the rights of that
 person existing before that date of notification, or
- (b) to impose a liability on any person (other than the State or
10 an authority of the State) in respect of anything done or
 omitted to be done before that date.