



**AN BILLE UM GHNÍOMHAIREACHT AIRGEADAIS
D'FHORBAIRT NÁISIÚNTA (LEASÚ) 2006
NATIONAL DEVELOPMENT FINANCE AGENCY
(AMENDMENT) BILL 2006**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of the legislation is to amend the National Development Finance Agency Act 2002 (“the Principal Act”) to give a statutory basis for the Centre of Expertise in the National Development Finance Agency (NDFA) to procure public private partnership arrangements (PPPs), particularly those funded by unitary payments from Departmental/Agency Votes, and to make provision for connected matters.

To improve the capacity of the public sector to undertake PPPs funded by unitary payments from Departmental/Agency Votes, the Government decided in July 2005 to consolidate the multiple procurement delivery skills required for PPP procurement in a Centre of Expertise in the NDFA. The Centre of Expertise commenced operations on an interim, non-statutory basis in 2005.

The principal legislative changes required to establish the Centre of Expertise on a statutory footing are:

- (i) to make procurement a statutory function of the NDFA, with consequential amendments for related matters, such as Ministerial guidelines, charging of costs, etc; and
- (ii) to allow for the appointment of three additional members to the NDFA Board on a statutory basis.

The provisions of the Bill are enabling, to allow the NDFA to undertake the procurement function on behalf of Departments/Agencies. The Bill also updates the Schedule of State authorities covered by the legislation and the provisions for adding State authorities to that Schedule.

Provisions

Section 1 is a standard interpretation section, defining terms used in the Bill, which defines the National Development Finance Agency Act 2002 as the Principal Act.

Section 2 is a technical amendment to certain definitions in section 1 of the Principal Act, to make the text consistent with the wording used elsewhere in legislation.

Section 3 amends section 3 of the Principal Act, which sets out the functions of the NDFA, to enable the NDFA to carry out two new functions:

- (i) to enter into PPPs with a view to transferring the rights and obligations under the PPP to a State authority; and
- (ii) to act as agent for any State authority in entering into PPPs.

It is expected that in most cases the NDFA will act as agent for a State authority.

Section 4 inserts a new section in the Principal Act, requiring the NDFA to draw up a code of conduct based on best practices to ensure good corporate governance in the performance of the functions of the Agency in relation to public private partnership arrangements, to be approved by the Minister for Finance. *Inter alia*, it is intended that the code of conduct should address how any potential conflicts of interest are to be managed.

Section 5 makes a consequential amendment to section 4 of the Principal Act to extend the existing obligation on the NDFA to have regard to Ministerial policy and guidelines on PPPs in exercising its functions, to cover the exercise by the NDFA of the new procurement functions.

Section 6 amends sections 12 and 14 of the Principal Act, providing for the appointment of three additional members to the Board, and making a consequential increase to the quorum for Board meetings from three to four.

Section 7 amends existing provisions for the signing of contracts by the NDFA in section 15 of the Principal Act. In recognition of the volume of documentation involved in PPP contracts, the provision will allow for contracts to be signed by any two staff authorised in writing by the Board as well as by members of the Board. (As the NDFA does not directly employ staff but carries out its functions through the National Treasury Management Agency (NTMA), the section provides for NTMA employees to sign contracts.)

Section 8 amends section 18 of the Principal Act, to allow the NDFA to disclose confidential information to “an appropriate Minister” as well as to the Minister for Finance.

Section 9 amends section 22 of the Principal Act to bring the procedures for adding bodies to the list of State authorities, covered by the legislation, into line with the current requirements of good practice in regard to the use of secondary legislation.

Section 10 substitutes a revised section for section 26 of the Principal Act. This provided that expenses incurred by the NDFA in its advisory functions in relation to specific projects (in effect, the costs of project-specific consultancies and advice) be charged and paid out of the Vote of the relevant Department. The revised section extends these expenses provisions to encompass the new procurement functions and also updates the arrangements to expressly provide for such expenses to be charged directly to the relevant State authority. It also permits the NDFA to pay expenses on an interim basis out

of the Central Fund, pending recoupment from the relevant State authority.

Section 11 updates the Schedule to the Principal Act to include all public bodies added to the Schedule by Statutory Instrument since the enactment of the Principal Act, and includes a new general category, in line with the provisions of section 9 of the Bill.

Section 12 amends the Schedule to the State Authorities (Public Private Partnership Arrangements) Act 2002 by adding the NDFA, to ensure that those PPP arrangements which the NDFA enters as principal are also covered by that Act.

Section 13 is a standard construction and citation provision.

Financial Implications

As provided under the revised section 26 of the Principal Act set out in section 10, the expenses of the NDFA are generally met from the Central Fund with certain exceptions, as set out below. As NDFA's functions are performed through the NTMA under section 11 of the Principal Act, the NTMA also incurs costs in performing these functions (including staffing costs) and these are met from the Central Fund, as is the case for NTMA costs generally. In so far as additional staff will be deployed as a consequence of the new functions, they will be employed by NTMA and their costs will be incurred by NTMA. The NTMA currently has eleven professionals dedicated exclusively to the work of NDFA. A rise in staffing levels to at least 20 staff dedicated solely to NDFA's work (in relation to all of its PPP functions) is anticipated by the Agency in order to deliver the increasing level of PPP deal flow.

In an elaboration of the original provisions in the Principal Act, it is now proposed that expenses incurred by the NDFA in relation to specific projects (in practice, the cost of specialist external advisers) should be charged directly to the relevant State authorities and not solely to Votes. The provision for recovery of expenses is being extended to cover the new procurement functions of the NDFA as well as its advisory functions. In addition, the provision clarifies that the NDFA may pay expenses from the Central Fund in the first instance, with subsequent recoupment from the relevant bodies. Project-specific advisory expenses would be expected to arise in relation to the PPP procurement of projects, whether directly by the sponsoring State authority or through the Centre of Expertise, as these would generally require specialist advice.

The revised section 26 retains the original provisions in section 26(2) (with a technical amendment to the legal drafting) for expenses associated with the financing functions to be paid out of repayments to the NDFA on loans advanced by it or out of any surplus accruing to the NDFA.

*An Roinn Airgeadais,
Samhain 2006.*