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Explanatory Memorandum](#)

**AN BILLE UM MARGAÍ IN IONSTRAIMÍ AIRGEADAIS
AGUS FORÁLACHA ILGHNÉITHEACHA 2007
MARKETS IN FINANCIAL INSTRUMENTS AND
MISCELLANEOUS PROVISIONS BILL 2007**

*Mar a tionscnaíodh
As initiated*

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[No. 34 of 2007]

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ACTS REFERRED TO

Central Bank Act 1942	1942, No. 22
Companies Acts 1963 to 2006	
Credit Union Act 1997	1997, No. 15
Finance Act 1993	1993, No. 13
Health Act 2004	2004, No. 42
Insurance (Miscellaneous Provisions) Act 1985	1985, No. 8
Investment Funds, Companies and Miscellaneous Provisions Act 2005	2005, No. 12
Investment Intermediaries Act 1995	1995, No. 11
Investor Compensation Act 1998	1998, No. 37
Ministerial and Parliamentary Offices Act 1938	1938, No. 38
Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001	2001, No. 33
National Treasury Management Agency (Amendment) Act 2000	2000, No. 39
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Netting of Financial Contracts Act 1995	1995, No. 25
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1992	1992, No. 3
Regional Technical Colleges Act 1992	1992, No. 16
Stock Exchange Act 1995	1995, No. 9
Taxes Consolidation Act 1997	1997, No. 39
Universities Act 1997	1997, No. 24



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AGUS FORÁLACHA ILGHNÉITHEACHA 2007
MARKETS IN FINANCIAL INSTRUMENTS AND
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BILL

5

entitled

AN ACT TO MAKE PROVISION IN RELATION TO
MARKETS IN FINANCIAL INSTRUMENTS AND TO
MAKE MISCELLANEOUS AMENDMENTS TO FINAN-
10 CIAL SERVICES LEGISLATION AND TO THE MINIS-
TERIAL AND PARLIAMENTARY OFFICES ACT 1938.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

MARKETS IN FINANCIAL INSTRUMENTS

15 **1.**—This Act may be cited as the Markets in Financial Instruments and Miscellaneous Provisions Act 2007. Short title and collective citation.

2.—(1) This Act comes into operation on such day or days as the Minister may appoint by order. Commencement.

(2) Different days may be appointed under this section for differ-
20 ent purposes or provisions of this Act.

3.—(1) In this Act: Interpretation.

“Bank” means the Central Bank and Financial Services Authority of Ireland;

“Irish investment services law” means—

25 (a) the measures adopted for the time being by the State to implement the Markets in Financial Instruments Directive and the Supplemental Directive, including but not limited to such measures enacted by—

(i) an Act,

(ii) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or

(iii) any other enactment,

(b) any measures directly applicable in the State in consequence of the Markets in Financial Instruments Directive, including but not limited to the MiFID Regulation, and 5

(c) any supplementary or consequential measures or both adopted for the time being by the State in respect of the MiFID Regulation; 10

“Markets in Financial Instruments Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments as amended or replaced from time to time by either a directive or regulation— 15

(a) made by a competent organ of the European Union, and

(b) implemented under the laws of the State;

“MiFID Regulation” means Commission Regulation (EC) No. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive; 20

“Minister” means the Minister for Finance;

“Supplemental Directive” means Commission Directive No. 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive; 25

(2) A word or expression that is used in this Act and is also used in the Markets in Financial Instruments Directive or the Supplemental Directive has the same meaning in this Act as it has in the Markets in Financial Instruments Directive or the Supplemental Directive, unless— 30

(a) the contrary intention appears, or 35

(b) Irish investment services law provides otherwise.

Expenses.

4.—The expenses incurred by the Minister in the administration of this Act shall be paid out of money provided by the Oireachtas.

Penalties for conviction on indictment of Irish investment services law.

5.—(1) In this section, “the Regulations” means the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007). 40

(2) A person is guilty of an offence if the person—

(a) fails to discharge a duty to which the person is subject under Regulation 40(1), 109(6) or 112(1) of the Regulations, or 45

(b) contravenes Regulation 7(1), 19, 52, 152(1), 159, 165(15), 165(16), 165(17), or 185(2) of the Regulations.

5 (3) A person guilty of an offence under subsection (2) is liable on conviction on indictment to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.

(4) This section is without prejudice to—

(a) any penalty provided by Irish investment services law in respect of a summary conviction for an offence, and

10 (b) the ability to bring and prosecute summary proceedings for any offence under Irish investment services law.

(5) This section comes into operation on 1 November 2007.

6.—Fees shall be payable pursuant to section 33K of the Central Bank Act 1942 in respect of the performance by the Bank of its functions under—

Fees payable under section 33K of Central Bank Act 1942.

15 (a) Irish investment services law, and

(b) Irish market abuse law as defined in the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

7.—The Central Bank Act 1942 is amended—

Amendments to Central Bank Act 1942.

20 (a) by substituting the following for the definition of “Supervisory Directives” in section 33AK(10):

“ ‘Supervisory Directives’ means—

(a) Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000,

(b) Council Directive 93/22/EEC of 10 May 1993,

25 (c) Council Directive 85/611/EEC of 20 December 1985,

(d) Council Directive 92/49/EEC of 18 June 1992,

(e) Council Directive 92/96/EEC of 10 November 1992,

30 (f) the 2003 Market Abuse Directive (within the meaning of Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),

35 (g) the supplemental Directives (within the meaning of that Part 4),

(h) the 2003 Prospectus Directive (within the meaning of Part 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),

40 (i) Directive 2005/68/EC of 16 November 2005,

- (j) the Transparency (Regulated Markets) Directive (within the meaning of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006),
- (k) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, 5
- (l) Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, 10
- (m) Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, 15
- (n) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and
- (o) the Supplemental Directive and the MiFID Regulation as defined in section 3(1) of the *Markets in Financial Instruments and Miscellaneous Provisions Act 2007*.” 20

(b) in Schedule 2, by inserting in Part 1 the following item after the item relating to the Investment Funds, Companies and Miscellaneous Provisions Act 2006: 25

“

2007	<i>Markets in Financial Instruments and Miscellaneous Provisions Act 2007</i>	Part 1 and sections 9 to 11, 13 and 17
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”

and

(c) in Schedule 2, by inserting in Part 2 the following items after the item relating to the European Communities (Reinsurance) Regulations 2006: 30

“

S.I. No. 660 of 2006	European Communities (Capital Adequacy of Investment Firms) Regulations 2006	The whole instrument
S.I. No. 661 of 2006	European Communities (Capital Adequacy of Credit Institutions) Regulations 2006	The whole instrument

35

”.

Repeal of Stock Exchange Act 1995. **8.**—The Stock Exchange Act 1995 is repealed on 1 November 2007. 40

PART 2

MISCELLANEOUS

5 9.—(1) An offence under Regulations 5(2), 6(2), 20(2), 22(4), 28(2), 29(2), 38(4), 58(9), 59(8), 60(6), 61(3), 62(4), 75(1), or 76(1) of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) is an offence which may be tried on indictment.

Penalties for conviction on indictment of European Communities (Reinsurance) Regulations.

10 (2) A person who commits an offence under a Regulation referred to in subsection (1) is liable on conviction on indictment to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.

(3) This section is without prejudice to—

15 (a) any penalty provided by the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) in respect of a summary conviction for an offence, and

(b) the ability to bring and prosecute summary proceedings for any offence under those Regulations.

20 10.—Section 1 of the Netting of Financial Contracts Act 1995 is amended—

Amendment to section 1 of Netting of Financial Contracts Act 1995.

(a) by inserting the following after the definition of “the Companies Acts”:

“ ‘entity’ includes—

(a) a natural or legal person, including a state or any international organisation duly established,

25 (b) any subdivision or authenticating or other authority of a state or international organisation, and

(c) an unincorporated body of persons;”,

(b) by substituting the following for the definition of “financial contracts”:

30 “ ‘financial contracts’ means one or more contracts consisting of one or more or a combination of the following:

(a) interest-rate contracts which are one or more of—

(i) single-currency interest rate swaps,

35 (ii) basis swaps,

(iii) forward-rate agreements,

(iv) interest-rate futures,

(v) interest-rate options,

- (vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and
 - (vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi); 5
- (b) foreign-exchange contracts which are one or more of—
- (i) cross-currency interest-rate swaps,
 - (ii) spot foreign-exchange contracts, 10
 - (iii) forward foreign-exchange contracts,
 - (iv) currency futures,
 - (v) currency options,
 - (vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and 15
 - (vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi);
- (c) contracts relating to, or which concern indices relating to, one or more of equities, bonds, gold, precious metals other than gold, and commodities other than precious metals, or a combination of them, which consist of one or more of— 20 25
- (i) swaps,
 - (ii) spot contracts,
 - (iii) forward contracts,
 - (iv) futures,
 - (v) options, 30
 - (vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and
 - (vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi); 35
- (d) securities lending and securities borrowing contracts;
- (e) sale and repurchase agreements, including reverse repurchase agreements, in relation to securities; 40
- (f) buy and sell back agreements in relation to either or both securities and equities;

- (g) in relation to equities,
- (i) equities lending and equities borrowing contracts, and
 - (ii) sale and repurchase agreements, including reverse repurchase agreements;
- 5
- (h) in relation to commodities,
- (i) commodity lending and commodity borrowing contracts, and
 - (ii) sale and repurchase agreements, including reverse repurchase agreements;
- 10
- (i) contracts for either or both the assumption of and laying off of credit risk—
- (i) on loans, debt securities or other assets, or
 - (ii) in relation to an entity,
- 15
- or other contracts of a similar nature;
- (j) any derivatives not otherwise encompassed by paragraphs (a) to (i) or paragraphs (k) to (o) concerning a reference item or index, whether cash-settled or physically settled, including—
- (i) swaps,
 - (ii) spot contracts,
 - (iii) forwards,
 - (iv) futures,
 - (v) options, and
 - (vi) contracts for difference;
- 20
- 25
- (k) title transfer collateral arrangements;
- (l) any net amount due under a netting agreement or a master netting agreement;
- (m) agreements to buy or sell, clear or settle transactions in, or act as a depository for, any—
- (i) financial asset, including, without limitation, any security (including any equity), currency, obligation evidencing debt (including a loan or deposit) and any negotiable or transferable instrument and any intangible asset, or
 - (ii) commodity (including precious metal), energy or energy source;
- 30
- 35
- (n) contracts contained in points 4 to 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council
- 40

of 21 April 2004 on markets in financial instruments;

(o) any contract included by virtue of section 2;

(p) contracts designated by regulations made under section 3.”, 5

and

(c) by substituting “agreement;” for “agreement.” in the definition of “party” and inserting the following after that definition:

“ ‘reference item or index’ means a reference item, rate or index relating to one or more of the following: 10

(a) interest;

(b) currencies;

(c) securities (including equities);

(d) commodities (including precious metals); 15

(e) weather;

(f) carbon or other emissions allowances;

(g) bandwidth;

(h) freight;

(i) energy (including energy sources such as electricity, oil, oil-related products, coal and gas); 20

(j) credit risk on any entity or asset;

(k) statistical data on economic conditions or any measure of economic risk or value;

(l) market loss; 25

(m) natural catastrophes;

(n) real property;

(o) renewable energy credits;

(p) regulatory licences or quotas;

(q) any factor not otherwise encompassed by paragraphs (a) to (p) which may impact on the business of an entity, regardless of whether it affects the business of a party to the relevant derivative.”. 30

Amendments to
Investment
Intermediaries Act
1995.

11.—Section 52 of the Investment Intermediaries Act 1995 (as amended by the Investor Compensation Act 1998) is amended— 35

(a) in subsection (2)(c) and (d), by deleting “, controlled” in each of the 2 places in which it appears,

(b) in subsection (7)(a), (b), and (c) by deleting “, controlled” in each of the 3 places in which it appears, and

(c) by inserting the following after subsection (9):

5 “(10) For the purposes of this section, an investment business firm is deemed to hold client money where—

(a) the money has been lodged on behalf of a client of the firm to an account with a credit institution or relevant party in the name of the firm or of any nominee of the firm, and

10 (b) the firm has the capacity to effect transactions on that account.

(11) For the purposes of this section, an investment business firm is deemed to hold client investment instruments where the firm—

15 (a) has been entrusted by or on account of a client with those instruments, and

(b) either—

(i) holds those instruments, including by way of holding documents of title to them, or

20 (ii) entrusts those instruments to any nominee,

and the firm has the capacity to effect transactions in respect of those instruments.

(12) In this section—

25 (a) ‘nominee’ means a person acting on behalf of an investment business firm as nominee, custodian, or otherwise, and includes an eligible custodian and a nominee company, and

30 (b) ‘relevant party’ means an exchange, clearing house, intermediate broker, OTC counterparty or investment business firm.”.

12.—The Insurance (Miscellaneous Provisions) Act 1985 is amended—

Amendments to Insurance (Miscellaneous Provisions) Act 1985.

(a) by inserting the following after section 3:

35 “Minister’s discretion to wind up Company.

3A.—(1) If the Minister thinks fit, the Minister may arrange for and require—

(a) that the shares held by the Company in Icarom plc (under administration) be transferred to the Minister, and

40 (b) the winding up in accordance with the Companies Acts 1963 to 2006 of the Company.

(2) Shares transferred to the Minister under subsection (3) vest in the Minister.

(3) Any assets of the Company remaining after the winding up of the Company shall be paid into or disposed of for the benefit of the Exchequer.”; 5

and

(b) by substituting the following for section 11:

“Obligation of shareholders to hold shares in trust for Minister. 11.—(1) Every member of the Company shall hold the member’s shares in the Company upon trust for the Minister and shall accordingly be bound to— 10

(a) pay every dividend and other money received by the member in respect of the shares to the Minister for the benefit of the Exchequer, and 15

(b) transfer the shares to the Minister as and when required by the Minister. 20

(2) If the Minister thinks fit, the Minister may arrange for and require a person who holds shares in a company controlled by the Company, and who holds the shares upon trust for the Minister, to transfer the shares to the Minister, as and when required by the Minister. 25

(3) Shares transferred to the Minister under subsection (1) or (2) vest in the Minister.”. 30

Amendments to Central Bank Act 1942.

13.—The Central Bank Act 1942 is amended—

(a) in section 33AK(5)(ak) by substituting “functions, or” for “functions.”,

(b) by inserting the following after subsection (5)(ak):

“(al) to the Agency, if the confidential information is required for the performance of the Agency’s functions.”, 35

(c) in section 33N(1), by substituting “2 months” for “3 months”,

(d) in section 57BO, by substituting the following for subsection (4): 40

“(4) For the purposes of this section, ‘bureau staff member’ includes the Financial Services Ombudsman, each of the Deputy Financial Services Ombudsmen and each of the members of the Financial Services Ombudsman Council.”, 45

(e) in section 57BZ, by substituting the following for subsection (4):

5 “(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 inform the complainant in writing of the decision and the reasons for the decision.”,

(f) by substituting the following for paragraph 2 of Schedule 3:

10 “2. (1) In this paragraph—

(a) ‘first anniversary’ means 1 May 2008, and

(b) ‘subsequent anniversary’ means 1 May of each subsequent year.

15 (2) Appointed members hold office for an indefinite period up to a maximum of 15 years.

(3) However, the Regulatory Authority may make rules of procedure under paragraph 8(2) of this Schedule for the purpose of determining terms of office of the members and of securing that on, or in,

20 (a) the years prior to the first anniversary, or

(b) the year prior to each subsequent anniversary date,

25 not less than 2 of the appointed members shall have ceased to hold office by virtue either of this paragraph or paragraph 5(2)(a) to (k) of this Schedule.

(4) If, in the years prior to the first anniversary or the year prior to each subsequent anniversary,

30 (a) no appointed member ceases to hold office under paragraph 5(2)(a) to (k) of this Schedule, then the terms of office of 2 appointed members must be completed on that anniversary,

35 (b) one appointed member ceases to hold office under paragraph 5(2)(a) to (k) of this Schedule, then the term of office of one other appointed member must be completed on that anniversary; or

40 (c) 2 or more appointed members cease to hold office under paragraph 5(2)(a) to (k) of this Schedule, then the term of office of no other appointed member must be completed on that anniversary.

45 (5) Which (if any) of the appointed members is or are to retire under this paragraph is to be determined as provided by the rules of procedure made by the Regulatory Authority pursuant to paragraph 8(2) of this Schedule.

- (6) Appointed members who—
 - (a) are required to retire under the rules of procedure made under paragraph 8(2) of this Schedule, or
 - (b) cease to hold office under paragraph 5(2)(c), 5 (e), (f) or (g) of this Schedule,

are eligible for re-appointment.

(7) However, a person who retires after having served as an appointed member for 15 years is not eligible for reappointment.”. 10

Amendments to National Treasury Management Agency Acts 1990 and 2000.

14.—The National Treasury Management Agency Acts 1990 and 2000 are amended—

(a) in section 18 of the National Treasury Management Agency (Amendment) Act 2000, in the definition of ‘designated body’, by substituting the following for paragraph (c): 15

“(c) the Health Service Executive established by section 6(1) of the Health Act 2004,”,

(b) in section 18 of the National Treasury Management Agency (Amendment) Act 2000, in the definition of ‘designated body’, by substituting the following for paragraph (e): 20

“(e) a body specified in Schedule 4 of the Taxes Consolidation Act 1997,”,

(c) in section 18 of the National Treasury Management Agency (Amendment) Act 2000, in the definition of ‘designated body’, by inserting the following after paragraph (e): 25

- “(ea) the Courts Service,
- (eb) a university within the meaning of the Universities Act 1997, other than Trinity College and the University of Dublin, 30
- (ec) the Dublin Institute of Technology,
- (ed) a college within the meaning of section 2 of the Regional Technical Colleges Act 1992, 35
- (ee) the Railway Procurement Agency, and
- (ef) the Housing Finance Agency plc.”,

(d) in section 22 of the National Treasury Management Agency (Amendment) Act 2000, by inserting the following after subsection (1): 40

“(1A) The Minister—

(a) may engage in transactions of a normal banking nature in connection with the exercise of the powers in subsection (1), and

(b) for the purposes of those transactions, may issue such funds from the Exchequer as he or she considers appropriate.

(1B) All expenses and other costs incurred by the Minister or the Agency, as appropriate, in connection with or arising out of those transactions shall be charged on the Central Fund.”,

(e) in section 22 of the National Treasury Management Agency (Amendment) Act 2000, by substituting “subsections (1) and (1A)” for “subsection (1)” in subsection (2), and

(f) in Part 3 of the National Treasury Management Agency (Amendment) Act 2000, by inserting the following after section 25:

“Agency may procure foreign currency for Government Minister or designated body.

25A.—(1) Subject to first receiving the consent of the Minister for Finance, a Minister of the Government or a designated body may request the Agency to procure for that Minister of the Government or designated body, as the case may be, foreign currency on terms and conditions agreed between—

(a) the Agency, and

(b) that Minister of Government or designated body.

(2) The Agency has all the powers necessary for it to comply with a request made under subsection (1).

(3) The Agency, in connection with the performance of its functions under subsection (1), may—

(a) pay into any foreign currency clearing account created by the Minister for Finance under section 139 of the Finance Act 1993 the proceeds of any transaction denominated in a currency other than the currency of the State, and

(b) apply any amounts standing to the credit of any foreign currency clearing account towards the discharging of payment obligations arising under any transaction in connection with the performance of its functions under subsection (1).”.

15.—Section 138(1) of the Finance Act 1993 is amended—

- (a) in section 138(1), by inserting the following after paragraph (c):

“(ca) The Minister—

(i) may engage in transactions of a normal banking nature in connection with the exercise of the powers in subsection (1)(a), (b) and (c), and 5

(ii) for the purposes of those transactions, may issue such funds from the Exchequer as he or she considers appropriate. 10

(cb) All the expenses and other costs incurred by the Minister in connection with or arising out of those transactions shall be charged on the Central Fund.”, 15

and

- (b) in section 139 by inserting the following after subsection (11):

“(12) The National Treasury Management Agency, in connection with the discharge of any of its functions, may— 20

(a) pay into any foreign currency clearing account the proceeds of any transaction denominated in a currency other than the currency of the State, and 25

(b) apply any amounts standing to the credit of any foreign currency clearing account towards the discharging of payment obligations arising in connection with the discharge of any of its functions.”. 30

16.—The Ministerial and Parliamentary Offices Act 1938 (as amended by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1992 and by the Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001) is amended— 35

- (a) in section 13A(7)(a)(i), by inserting “subject to subsection (9),” before “in case”,

- (b) in section 13A by inserting the following after subsection (8):

“(9) On application for a pension under this section to the Minister for Finance, by a person whose entitlement to the pension arose on or after the date of commencement of this section, the pension is payable as of and from a date that the Minister for Finance may determine in writing that is— 40 45

(a) not earlier than the date of entitlement, and

(b) not later than the date of the application.”,

(c) in section 13AA(1), by substituting the following for paragraphs (a) and (b):

5 “(a) the person has completed not less than 2 years of ministerial service but is not entitled to a ministerial pension under section 13A, or

(b) the person has completed not less than 2 years of secretarial service but is not entitled to a secretarial pension under section 13A.”,

10 and

(d) in section 13AA(4), by substituting “(but less than 8)” for “(but less than 3)”,

15 (e) in section 13B, by re-numbering subsection (5)(a)(iii) as subsection (5)(a)(iv) and by inserting the following after subsection (5)(a)(ii):

“(iii) in the case of a person—

(I) whose original pension is a secretarial pension, and

20 (II) who, on ceasing to hold a qualifying office after the operative date, has served in a ministerial office for at least 2 but less than 3 years,

an amount equal to the difference between—

25 (A) the amount of the ministerial pension which would then be payable to the person if such person was a minister, calculated in accordance with section 13AA of the 1938 Act, and

30 (B) the amount of the person’s original pension.”,

(f) in section 13B(5)(a)(iv), by inserting “or (iii)” after “subparagraph (ii)”, and

35 (g) in section 13B(5)(b)(ii), by substituting “subparagraph (iv)” for “subparagraph (iii)”.

17.—Section 35 of the Credit Union Act 1997 is amended by substituting the following for subsection (2):

Amendment to section 35 of Credit Union Act 1997.

“(2) A credit union shall not make a loan to a member—

40 (a) for a period exceeding 5 years if, were the loan to be made, the total gross amount outstanding in respect of all loans with greater than 5 years to the final repayment date would then exceed 20 per cent of the total gross loan book balance outstanding at that time in respect of all loans made by the credit union,

(b) for a period exceeding 10 years if, were the loan to be made, the total gross amount outstanding in respect of all loans with greater than 10 years to the final repayment date would then exceed 10 per cent of the total gross loan book balance outstanding at that time in respect of all loans made by the credit union, or 5

(c) in the circumstances specified in subsection (3),

and, for the purposes of this subsection, the 'final repayment date' for a loan shall be— 10

(i) the date on which the loan is due to expire, as indicated on the relevant credit agreement in accordance with section 37C(1)(j), or

(ii) any subsequent date agreed between the credit union and the member to whom the loan has been made.”. 15



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AGUS FORÁLACHA ILGHNÉITHEACHA 2007
MARKETS IN FINANCIAL INSTRUMENTS AND
MISCELLANEOUS PROVISIONS BILL 2007**

EXPLANATORY MEMORANDUM

Purpose of the Bill

While the Markets in Financial Instruments Directive (MiFID) was transposed by S.I. (S.I. No. 60 of 2007) on 15 February 2007, some complementary measures (for instance, to provide for significant penalties on foot of conviction on indictment) require primary legislation.

The Bill is also being availed of to make a range of largely technical amendments to various Acts, including Acts concerning the National Treasury Management Agency, Financial Regulator, Financial Services Ombudsman, Ministerial pensions and credit unions.

Provisions of the Bill

Section 1 is a standard section setting out the short title of the Act.

Section 2 is a standard section providing that the Act comes into operation on such day(s) as the Minister appoints by Order.

Section 3 is a standard interpretation section, defining terms used in the Bill, such as the Markets in Financial Instruments Directive (MiFID).

Section 4 is a standard provision that provides the authority for any expenses incurred by the Minister in the administration of the Act to be met out of funds provided by the Oireachtas.

Section 5 provides that a person guilty of an offence under certain provisions of the MiFID regulations (such as operating without authorisation) is liable on conviction on indictment to a maximum penalty of €10 million and/or imprisonment for ten years.

Section 6 will allow the Financial Regulator (with the permission of the Minister for Finance and having conducted appropriate consultations) to charge fees in respect of its functions under Irish investment services law, and/or Irish market abuse law.

Section 7 amends the definition of Supervisory Directive in subsection (10) of Section 33AK of the Central Bank Act 1942 to include recent EU Directives such as MiFID and the Capital Requirements Directive. Section 7 also amends schedule 2 of the Central Bank Act 1942 in order to ensure that the Financial Regulator's powers will cover the Markets in Financial Instruments and Miscellaneous Provisions Act and the Regulations transposing the Capital Requirements Directive.

Section 8 repeals the Stock Exchange Act 1995, as its provisions are being overtaken by the MiFID reforms.

Section 9 provides that a person guilty of an offence under certain provisions of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) is liable on conviction on indictment to a maximum penalty of €10 million and/or imprisonment for ten years. The intention of this provision is to provide the option of a more severe set of penalties for serious breaches of certain provisions of the Reinsurance Regulations. Minor offences as a matter of course will continue to be dealt with through the administrative sanctions system and/or as summary offences.

Section 10 amends section 1 of the Netting of Financial Contracts Act 1995 to provide for the extension of the protection afforded by that Act, by expanding the range of financial contracts that may be encompassed.

Section 11 is a technical amendment which confirms the limitations of receiver/liquidator access to client money following the wind-up of an authorised investment business firm. Changes to this effect have been included in the MiFID Regulations and it is necessary to remove references to the word "controlled" from section 52 of the Investment Intermediaries Act 1995 to clarify its application to those companies outside the remit of the MiFID.

Section 12 provides for technical amendments to provide for a simplification of the State ownership structure of Icarom plc (under administration) by removing the holding company, Sealúchais Árachais Teoranta (SAT), from the structure and providing instead that the Minister for Finance be the sole shareholder in the company, which would be transformed into a single-member company.

Section 13

Section 13(a) and *(b)* enable the Financial Regulator, subject to any EU confidentiality constraints, to disclose confidential information to the National Consumer Agency for the performance of the Agency's functions as provided for in the Consumer Protection Bill 2007.

Section 13(c) extends the deadline for submission of its annual budget by the Financial Regulator from end September to end October each year. Given the complexity of the process for establishing the Financial Regulator's budget, it is felt that the Financial Regulator should be given a more extensive period for preparation.

Section 13(d) extends the immunity from costs arising from the discharge of their duties to members of the Financial Services Ombudsman Council. It will ensure that members of the Council are not liable for damages arising from the discharge, in good faith, of their statutory duties.

Section 13(e) relieves the Ombudsman of a requirement to provide the Financial Regulator with certain details where it decides not to investigate or to discontinue an investigation.

Section 13(f) will reduce the number of required compulsory retirements from the Board of the Financial Regulator by the number, if any, of voluntary resignations which may have occurred between the relevant anniversary dates to ensure continuity of membership and minimise any potential disruption to the efficient working of the Financial Regulator.

Section 14 amends the National Treasury Management Agency (Amendment) Act 2000 as follows: (i) it amends the definition of a designated body for the purposes of Part 3 of that Act to allow a wider range of State bodies to avail of the deposit-taking and lending facilities provided by the National Treasury Management Agency's (NTMA) central treasury service without first being designated by the Minister for Finance; (ii) it allows the NTMA to engage in transactions of a normal banking nature in relation to the activities of the central treasury service, which will, for example, allow the use of interest rate swaps to hedge interest rate risk where fixed rate loans are provided through the central treasury service, and (iii) it allows the NTMA to provide foreign exchange services to government departments and to bodies which can avail of the central treasury service.

Section 15

Section 15(a) amends section 138 of the Finance Act 1993 to allow the NTMA to engage in transactions of a normal banking nature in relation to the Post Office Savings Bank Fund, which is managed by the National Treasury Management Agency as part of the national debt, in line with the provisions governing the management of the debt generally by the Agency.

Section 15(b) provides that the NTMA may use the foreign currency clearing accounts established under section 139 of the Finance Act 1993 for foreign currency transactions other than debt-related transactions, e.g., foreign currency transactions arising from its role as manager of the National Pensions Reserve Fund.

Section 16 amends the Ministerial pensions legislation. Currently, a pension is payable if the former office holder applies for it within six months of becoming eligible for it; otherwise, it is payable from the date of application. This amendment will allow for payment to be back-dated to a date not earlier than the date of entitlement.

It also brings the qualifying requirements for a Ministerial pension under the "old" (i.e. pre-1993) pension scheme into line with the provisions of the current pension scheme. In effect, it provides for payment of a Ministerial pension to a member of the pre-1993 scheme who has more than two years service as a Minister. This has been the position for members of the current scheme since 2001.

Section 17 amends the wording of section 35(2) of the Credit Union Act 1997 to allow for a practical interpretation of the lending limits which apply to the making of loans.

*An Roinn Airgeadais
Aibreán 2007.*