

DÁIL ÉIREANN

AN BILLE UM MARGAÍ IN IONSTRAIMÍ AIRGEADAIS AGUS FORÁLACHA ILGHNÉITHEACHA 2007 —AN CHOISTE

MARKETS IN FINANCIAL INSTRUMENTS AND MISCELLANEOUS PROVISIONS BILL 2007 —COMMITTEE STAGE

Leasú Ionadach *Substitute Amendment*

NEW SECTION

19. In page 18, after line 15, to insert the following new section:

“Further
amendments of
Central Bank Acts.

19.—The Central Bank Act 1997 is amended—

(a) in section 28, by adding the following definitions:

“ ‘credit’ includes any deferred payment, cash loan or other form of financial accommodation, such as—

- (a) consumer credit, hire purchase or mortgage credit,
- (b) factoring, with or without recourse,
- (c) financial leasing, or
- (d) financing of commercial transactions;

‘home reversion agreement’ means an agreement between a vendor and a home reversion firm that provides—

- (a) for the conveyance by the vendor to the home reversion firm of an estate or interest in land (which includes the principal residence of the vendor or of the vendor’s dependants) for a discounted sum or an income (or both), and
- (b) for the vendor to retain the right to live in the residence until the occurrence of one or more events specified in the agreement;

‘home reversion firm’ means a person carrying on a business of entering into home reversion agreements;

‘leasing agreement’ means an agreement of more than 3 months duration for the bailment of goods to a hirer under which the property in the goods remains with the owner, and includes a consumer-hire agreement within the meaning of the Consumer Credit Act 1995;

‘hire-purchase’ means a bailment of goods—

- (a) under which—
 - (i) the hirer may buy the goods, or

[*NEW SECTION*]

(ii) if the agreement is complied with, the property in the goods will pass to the hirer,

in return for periodical payments, or

(b) in which, by virtue of 2 or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either—

(i) the hirer may buy the goods, or

(ii) if the agreements are complied with, the property in the goods will pass to the hirer;

‘mortgage credit’ means an agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land;

‘retail credit firm’ means a person whose business consists wholly or partly of the provision of credit to—

(a) a consumer within the meaning of the Consumer Credit Act 1995,

(b) a person (whether or not that person is an incorporated body) but excluding any incorporated body that has an annual turnover in excess of €3,000,000,

(c) any unincorporated group of persons, or

(d) an incorporated body that—

(i) has an annual turnover of €3,000,000 or less in the financial year preceding that in which the credit is granted, and

(ii) is not a member of a group of companies that has a combined turnover greater than €3,000,000,

but does not include—

(e) a person who, in respect of such a business—

(i) is a regulated financial service provider within the meaning of the Central Bank Act 1942, or

(ii) is the holder of a licence under section 8 of the Pawnbrokers Act 1964, or

(f) a company that, being a member of a group of companies, provides credit only to one or more other companies that are members of the group;”;

(b) in section 28, by substituting the following definition for the definition of “regulated business”:

“ ‘regulated business’ means a bureau de change business, a money transmission business, a home reversion firm or a retail credit firm;”;

[*NEW SECTION*]

(c) immediately before section 29, by substituting for the Chapter heading the following:

“CHAPTER 2

Carrying on regulated business without authorisation prohibited”;

(d) by inserting the following section after section 31:

“Provisions supplementary to section 31 applicable to retail credit and home reversion firms. 31A.—For the purposes of section 31(2)(b), in order to obtain and retain authorisation, a retail credit firm or home reversion firm shall satisfy the Bank—

- (a) that, where applicable, the memorandum and articles of association of the firm will enable it to operate in accordance with this Act, and any condition or requirement that the Bank may impose,
- (b) as to the probity and competence of each of the firm’s directors and managers,
- (c) as to the suitability of each of the firm’s qualifying shareholders or partners,
- (d) as to the organisational structure and management skills of the firm and that adequate levels of staff and expertise will be employed to carry out its activities,
- (e) that the firm has and will follow procedures that will enable the Bank to be supplied with all information necessary for the performance of the Bank’s supervisory functions and to enable the public to be supplied with information that the Bank specifies,
- (f) that the organisation of the firm’s business structure is such that it, and any of its associated or related undertakings, (so far as appropriate and practicable) are capable of being supervised adequately by the Bank, and
- (g) as to the conduct of the firm’s business, financial resources and any other matters that the Bank considers necessary in the interests of the proper and orderly regulation and supervision of authorised firms or in the interests of the protection of customers or potential customers.”;

(e) by inserting the following section after section 32:

“Additional provisions applicable to retail credit and home reversion firms. 32A.—(1) An authorisation granted by the Bank under section 31 to a retail credit or home reversion firm may specify classes of services, and additional services, that the firm may provide.

[*NEW SECTION*]

(2) An authorisation granted by the Bank under section 31 of this Act to a retail credit firm may include an authorisation to act as a home reversion firm.

(3) The Bank may amend—

(a) the classes of retail credit services or other services that may be provided in accordance with subsections (1) or (2), or

(b) the designation or classification of firms or services.

(4) For the purposes of subsections (1) to (3), the Bank may use such designation or classification of firms or services as the Bank considers appropriate to describe the services provided.

(5) At any time before granting or refusing an authorisation to a firm, the Bank may—

(a) request such further information from the firm, or

(b) instruct an authorised officer to make such inquiries, or carry out such investigations,

as it considers necessary for the purpose of properly evaluating an application. Any such inquiries or investigations shall be carried out in accordance with this Act.

(6) In the case of a retail credit or home reversion firm authorised in another EEA Country, the Bank—

(a) shall have regard to any requirements imposed on the firm by an authority of that country that appears to the Bank to exercise a regulatory or supervisory role similar to that of the Bank in relation to the firm, and

(b) may exchange with that authority information relevant to the carrying out of the Bank's functions under this Act or the functions of that authority under the laws of that country.;"

(f) by inserting the following section after section 33:

“Imposition of conditions or requirements on authorised retail credit firms and home reversion firms.

33A.—(1) Without limiting section 33, the Bank may do all or any of the following in respect of an authorised retail credit firm or an authorised home reversion firm:

(a) make the firm's authorisation subject to such conditions or requirements, or both, as it considers appropriate, relating to—

(i) the proper and orderly regulation and supervision of retail credit firms or authorised home reversion firms, and

(ii) the protection of their customers or potential customers;

[*NEW SECTION*]

- (b) impose conditions or requirements, or both, relating to the affairs or activities in an associated undertaking or a related undertaking;
- (c) require the display on a credit agreement or home reversion agreement, or on any other relevant document, of a notice in a form provided or prescribed by the Bank of any information relevant to the agreement;
- (d) at any time, impose conditions or requirements, or both, on an authorised firm and either amend or revoke any condition or requirement imposed under this paragraph or under paragraph (a), (b) or (c).

(2) A condition or requirement referred to in subsection (1) may be imposed in relation to any or all of the following:

- (a) an authorised firm;
- (b) all authorised firms;
- (c) a class or classes of authorised firms;
- (d) a specified period of time or times;
- (e) an associated undertaking or related undertaking;
- (f) such matters relating to the proper and orderly regulation and supervision of authorised firms, and the protection of their customers or potential customers, as the Bank considers appropriate.

(3) Without limiting subsections (1) and (2), the Bank may impose conditions or requirements on an authorised firm, or a class of authorised firms concerning—

- (a) the level of training, qualifications or professional competence of managers, officers or employees,
- (b) the provision of information to the Bank or to a person specified by the Bank, and
- (c) the application of a prescribed code of practice relating to—
 - (i) regulated financial service providers within the meaning of the Central Bank Act 1942, or
 - (ii) a class of regulated financial service providers whose business appears to be comparable to that of an authorised firm or a class of authorised firms.”;

(g) by inserting the following section after section 34B:

[*NEW SECTION*]

“Transitional provisions.

34C.—(1) Despite section 29, a person carrying on the business of a retail credit firm, or a home reversion firm, immediately before the commencement of *Part 2* of the *Markets in Financial Instruments and Miscellaneous Provisions Act 2007* is taken to be authorised as a regulated business until the Bank has granted or refused authorisation to the person, provided the person applies to the Bank under section 30 for authorisation no later than 3 months after that commencement.

(2) If a person is taken to be authorised as a regulated business under subsection (1), the Bank may do either or both of the following:

- (a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of a regulated business;
- (b) direct that person not to carry on the business of a retail credit firm, or the business of a home reversion firm, for such period (not exceeding 3 months) as is specified in the direction.

(3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.””.

—An Tánaiste agus Aire Airgeadais.