



DÁIL ÉIREANN

AN BILLE UM AN MBANC-CHORPARÁID ANGLA-ÉIREANNACH 2009 **ANGLO IRISH BANK CORPORATION BILL 2009**

LEASUITHE COISTE **COMMITTEE AMENDMENTS**

[It is proposed to take Committee and Report stages of this Bill today. Accordingly, this numbered list of amendments is circulated in advance of the conclusion of Second Stage. 20-01-09]

DÁIL ÉIREANN

AN BILLE UM AN MBANC-CHORPARÁID ANGLA-ÉIREANNACH 2009 —AN COISTE

ANGLO IRISH BANK CORPORATION BILL 2009 —COMMITTEE STAGE

Leasuithe Amendments

SECTION 1

1. In page 6, line 24, after “Minister” to insert “on behalf of the Oireachtas”.

—Arthur Morgan.

SECTION 2

2. In page 6, before section 2, to insert the following new section:

“Appointment of
inspectors.

2.—(1) The Minister may, and shall if required to do so pursuant to a resolution under this section passed by both Houses of the Oireachtas, apply to the High Court for an order under the Companies Acts for the appointment of one or more inspectors to investigate the affairs of Anglo Irish Bank, having regard in particular to the questions as to whether:

- (a) its affairs have been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in an unlawful manner or in a manner which is unfairly prejudicial to some part of its members, or that any actual or proposed act or omission of the company (including an act or omission on its behalf) was so prejudicial;
- (b) persons connected with the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members;
- (c) that its members have not been given all the information relating to its affairs which they might reasonably expect; or
- (d) such additional grounds as the Minister specifies in his or her application to the High Court.

(2) For the purposes of *subsection (1)*, the Minister has all such powers as are necessary to enable him or her to apply to the High Court for an order of the kind referred to in that subsection and the High Court shall hear and determine that application as if the Company Law Enforcement Act 2001, in respect of applications concerning Anglo Irish Bank, vested those powers concurrently in the Minister and in the Director of Corporate Enforcement, so as to be capable of being exercised by either of them.

[SECTION 2]

(3) Notwithstanding *subsection (1)*, the Minister is not required to make an application under that subsection if he notifies both Houses of the Oireachtas that the Director of Corporate Enforcement has applied to the High Court for an order under the Companies Acts for the appointment of one or more inspectors to investigate the affairs of Anglo Irish Bank.”.

—Joan Burton.

3. In page 7, subsection (1)(b), between lines 16 and 17, to insert the following:

“(iv) to provide funding for sustainable small and medium sized indigenous enterprises.”.

—Arthur Morgan.

SECTION 3

4. In page 8, between lines 2 and 3, to insert the following subsection:

“(6) Where the Minister proposes to specify a framework under this section—

(a) he or she shall cause a draft of the proposed framework to be laid before each House of the Oireachtas, and

(b) he or she shall not make the framework unless and until a resolution approving of the draft has been passed by each such House.”.

—Joan Burton.

SECTION 6

5. In page 8, before section 6, to insert the following new section:

“Rights of Existing shareholder in the event of a new share issue.

6.—(1) If at any stage steps are proposed to be taken to re-constitute Anglo Irish Bank as a public limited company or to offer for subscription new shares in the bank, the Minister shall lay before both Houses of the Oireachtas a scheme setting out the steps so proposed to be taken and those steps shall not be taken unless a resolution approving of the scheme has been passed by both such Houses.

(2) A scheme under *subsection (1)* shall provide for—

(a) any invitation to subscribe for shares in Anglo Irish Bank to be first offered to persons from whose beneficial ownership shares were transferred to the Minister by operation of this Act;

(b) a specified percentage of the total amount of shares so offered for subscription (being not less than 50 per cent of the total) to be reserved and made available for subscription only by persons whose shareholdings transferred to the Minister by operation of this Act were each of them in aggregate valued by the Assessor under this Act at less than €50,000.

(3) A scheme under *subsection (1)* shall provide that where, for the purposes of the Capital Gains Tax Acts, an allowable loss has accrued to a person on the disposal effected by this Act of that person’s shares in Anglo Irish Bank, that person is entitled to be credited without payment, to the extent that the allowable loss has not been deducted from chargeable gains accruing to the person in any subsequent year of assessment, with shares offered for subscription under the scheme equivalent in value to the allowable loss but not exceeding in value €50,000.”.

—Joan Burton.

[SECTION 6]

6. In page 8, subsection (1), line 19, after “Minister” to insert “on behalf of the Oireachtas”.

—Arthur Morgan.

SECTION 8

7. In page 9, subsection (1), line 21, after “Minister” to insert “having sought the approval of the Oireachtas”.

—Arthur Morgan.

8. In page 9, between lines 28 and 29, to insert the following subsection:

“(4) The Minister’s nominees shall make themselves available to appear before relevant Oireachtas committees when so invited.”.

—Arthur Morgan.

SECTION 9

9. In page 12, between lines 22 and 23, to insert the following subsection:

“(12) (a) A direction given by the Attorney General under *subsection (8)* shall remain in force for a period of 2 years from the date on which it is given and shall then, unless previously renewed, expire.

(b) A direction may, within one month before it is otherwise due to expire, be renewed by the Attorney General if he or she considers that the order in question contains information that continues, on the date of renewal of the direction, to be commercially sensitive.

(c) If a direction given by the Attorney General is not renewed by him or her under this subsection, the order of the Minister under *subsection (5)* to which the direction relates shall, as if made on the date on which the direction expires, be printed, sent, published and made available for sale, in accordance with the terms of the Statutory Instruments Act 1947.”.

—Joan Burton.

SECTION 10

10. In page 12, before section 10, to insert the following new section:

“Treatment of certain deposits.

10.—(1) Where €5,000,000 or more is owing to Anglo Irish Bank or a subsidiary or subsidiary undertaking of Anglo Irish Bank in respect of a financial obligation of a depositor in Anglo Irish Bank, the depositor may not, without the express written consent of Anglo Irish Bank—

(a) reduce the deposit (whether held on trust or otherwise) below the amount owing in respect of the financial obligation, or

(b) if at the commencement of this Act the deposit is less than the amount owing to Anglo Irish Bank or the subsidiary or subsidiary undertaking under the obligation, reduce the deposit at all.

(2) The liquidated sum that represents any part referred to in *subsection (3)* of a deposit to which *subsection (1)* applies is payable to Anglo Irish Bank upon demand by Anglo Irish Bank. Until that sum is paid it shall be held in trust, by the depositor and any other person to whom it or any part of it has been paid, for Anglo Irish Bank.

[SECTION 10]

(3) This subsection refers to any part of a deposit to which *subsection (1)* applies that was repaid (in whole or in part) to a depositor without the express written consent of Anglo Irish Bank after 15 January 2009 but before the commencement of this Act.

(4) A sum payable by virtue of *subsection (2)* may be recovered as a debt in any court of competent jurisdiction.

(5) Nothing in this section affects any statutory or contractual right of set-off or any other contractual right available to Anglo Irish Bank.

(6) In this section—

“deposit” means—

(a) a credit balance with Anglo Irish Bank that results from funds left in an account or from a temporary situation deriving from normal banking transactions and that Anglo Irish Bank is required to repay under the legal and contractual conditions applicable, or

(b) a debt evidenced by a certificate issued by Anglo Irish Bank;

“depositor” includes a spouse or child (being a child who is a minor) of a depositor but does not include a financial institution (within the meaning given by the Central Bank Act 1997) or a credit institution;

“financial obligation” includes every kind of financial accommodation and, without prejudice to the generality of the foregoing, includes a loan, a quasi-loan (within the meaning of Part III of the Companies Act 1990), an indemnity and a guarantee.”.

—Arthur Morgan.

SECTION 19

11. In page 17, subsection (1), line 10, after “nominee” to insert “with the consent of the Oireachtas”.

—Arthur Morgan.

SECTION 20

12. In page 19, between lines 27 and 28, to insert the following subsection:

“(6) The Minister or the Minister’s nominee may not—

(a) appoint a person as a director of Anglo Irish Bank or any of its subsidiaries or subsidiary undertakings under this section, or

(b) exercise any power under the memorandum or articles of Anglo Irish Bank to appoint a person as such a director,

unless the name of the person so appointed is on a list—

(i) drawn up by the Minister, of persons considered appropriate for the purpose, and

[SECTION 20]

- (ii) submitted for consideration to, and approved by resolution by, a committee of both Houses of the Oireachtas appointed to consider such public affairs administered by the Department of Finance and such matters of policy for which the Minister is officially responsible as the committee may select.”.

—Joan Burton.

- 13.** In page 19, between lines 27 and 28, to insert the following subsection:

“(6) Directors appointed to Anglo Irish Bank shall make themselves available on request to appear before relevant Oireachtas committees.”.

—Arthur Morgan.

SECTION 22

- 14.** In page 20, lines 22 to 25, to delete subsection (4) and substitute the following:

“(4) The Minister may not appoint a person as the Assessor unless—

- (a) the Minister is satisfied that the person would, if appointed, have no actual or perceived conflict of a material nature between any personal or business interests and the performance of the Assessor’s functions, and
- (b) the name of the person proposed to be so nominated has been submitted by the Minister to each House of the Oireachtas and resolution approving of the appointment of that person has been passed by each such House.”.

—Joan Burton.

- 15.** In page 21, subsection (7), between lines 3 and 4, to insert the following:

“(d) shall report quarterly to the Oireachtas Joint Committee on Finance and the Public Service.”.

—Arthur Morgan.