



**AN BILLE UM FHORAIS CHREIDMHEASA
(COBHSÚCHÁN) 2010
CREDIT INSTITUTIONS (STABILISATION) BILL 2010**

EXPLANATORY MEMORANDUM

This Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Purpose of the Bill

The purpose of this Bill is to provide, in the context of the National Recovery Plan 2011-2014 and the European Union/International Monetary Fund Programme of Financial Support for Ireland, for the stabilisation, and the preservation or restoration of the financial position, of certain credit institutions and for other related purposes. The Bill recognises the considerable financial support given by the State to certain credit institutions to help them meet their financial and regulatory obligations. The Bill provides for the exercise of functions to be conferred on the State in relation to certain institutions in circumstances including:

- (a) where there is a serious disturbance in the economy of the State;
- (b) where measures are necessary to address a unique and unprecedented economic crisis;
- (c) where there is a continuing serious threat to the stability of certain credit institutions in the State and to the financial system generally;
- (d) where the functions and powers to be conferred by the Bill are necessary to secure financial stability and to effect a reorganisation of certain credit institutions, consistently with EU state aid rules in the context of the National Recovery Plan 2011-2014 and the European Union/International Monetary Fund Programme of Financial Support for Ireland;
- (e) where the urgent reorganisation of certain credit institutions is of systemic importance to the State;
- (f) where it is necessary to maintain public confidence in, and enhance, the protection of deposits in credit institutions generally; and

- (g) where it is desirable to promote and facilitate investment by persons other than the State in credit institutions to reduce their reliance upon State support.

Provisions of the Bill

PART 1

PRELIMINARY

Section 1 — Short title and commencement provides for the short title of the Bill, and for its commencement on such day or days as the Minister by order appoints.

Section 2 — Interpretation is a standard interpretation section, defining a number of terms used in the Bill. One of the key terms defined is “relevant institution” being the types of entities in respect of which the Bill’s provisions apply.

Section 3 — Prescribed institutions provides that the Minister may prescribe an individual (whose ordinary residence is in the State) or body (with its registered or chief office in the State) as a “relevant institution” for the purposes of the Bill if any assets or liabilities of a relevant institution have been transferred to that person under certain specified enactments and the Minister is of the opinion that it is necessary or desirable to do so for the purposes of the Bill.

Section 4 — Purposes of Act provides that the purposes of the Bill are:

- (a) to address the serious and continuing disruption to the economy and the financial system and the continuing serious threat to the stability of certain credit institutions in the State and the financial system generally;
- (b) to implement the reorganisation of credit institutions in the State to achieve the financial stabilisation and restructuring of those institutions, consistently with EU state aid rules, in the context of the National Recovery Plan 2011-2014 and the European Union/International Monetary Fund Programme of Financial Support for Ireland;
- (c) to continue the process of reorganisation, preservation and restoration of Anglo Irish Bank Corporation Limited;
- (d) to continue the process of preservation and restoration of the financial position of building societies;
- (e) to protect the interests of depositors of credit institutions;
- (f) to address the compelling need to facilitate the availability of credit in the State, to protect the State’s interest in respect of guarantees issued by the State under the Credit Institutions (Financial Support) Act 2008, to protect the interests of taxpayers, to restore confidence in the banking sector and to underpin Government support measures, and to align the activities of the relevant institutions and the duties and responsibilities of their officers and employees with the public interest and the Bill;

(g) to preserve and restore the financial position of a relevant institution; and

(h) to empower the Court to impose further reorganisation measures.

Section 5 — Independence of Bank and Governor not affected provides that nothing in the Bill prevents the performance by the Governor of the Central Bank or the Central Bank of their functions in relation to any credit institution authorised or regulated in the State, or affects any obligation arising under EU or EC treaties or the ESCB Statute.

Section 6 — Relationship framework provides that the Minister may from time to time specify a relationship framework in writing to govern the relationship between the Minister and the Governor of the Central Bank in relation to the exercise of the Minister's powers under the Bill.

PART 2

DIRECTION ORDERS

Section 7 — Proposed direction orders provides that the Minister may make a proposed direction order, proposing that a relevant institution be directed to take or refrain from taking any action, during a specified period, where the Minister, having consulted with the Governor of the Central Bank, is of the opinion that making such an order is necessary to achieve a purpose of the Bill, as specified in the proposed direction order. If the Minister makes a proposed direction order (or part thereof) with the intention of preserving or restoring the financial position of a credit institution, the Minister shall declare in the proposed order that the proposed order or part thereof is made with that intention, in accordance with Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 which were implemented in the State in the European Communities (Reorganisation and Winding Up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004) (hereinafter referred to as "CIWUD"). This section also sets out procedures to be followed in the event the Minister makes any such proposed direction order.

Section 8 — Relevant institution may act in accordance with proposed direction order provides that where a relevant institution consents to the making of a direction order, it may act in accordance with the terms of a proposed direction order, before the making of the direction order by the High Court.

Section 9 — Direction orders provides that the Minister shall apply to the High Court for a direction order in the terms of the relevant proposed direction order. This section also provides for related provisions, including the manner of the application (*ex parte*), the evidence which the High Court may hear, and the test to be applied by the High Court in making the direction order. If in a proposed direction order the Minister has declared the intention of preserving or restoring the financial position of the credit institution, and the High Court is satisfied that the proposed direction order or part of it is made with that intention, the High Court shall declare in the relevant direction order that the order or part is a reorganisation measure so as to be recognised across the EU, in reliance upon CIWUD. The section also provides that the High Court may in specified circumstances amend or vary the direction order from that

proposed by the Minister, and that the High Court will in certain specified circumstances order that the direction order, or any part of it, will have immediate effect.

Section 10 — Application to vary direction order provides that the Minister may apply to the High Court to vary a direction order if the Minister is of the opinion that the variation is necessary to achieve a purpose of the Bill.

Section 11 — Application to set aside direction order provides that the relevant institution or a member of it may apply to the High Court, within a specified period, to have a direction order set aside. On any such application, the High Court may in specified circumstances set the order aside or may, if considered appropriate in certain circumstances, amend or vary the direction order. The validity of actions previously taken under the direction order are not prejudiced by an order under this section.

PART 3

SPECIAL MANAGEMENT

Section 12 — Interpretation (Part 3) is an interpretation section for this Part which provides for the instances in which a relevant institution will be regarded as under special management.

Section 13 — Proposed special management orders provides that the Minister may make a proposed special management order to appoint as special manager of a relevant institution a person who has, in the Minister's opinion, the requisite knowledge, expertise and experience of the financial sector to be a special manager of a relevant institution. A proposed special management order may be made only where the Minister, having consulted with the Governor of the Central Bank, is of the opinion that making such an order is necessary for achieving a purpose of the Bill, as specified in the proposed order. If the Minister makes a proposed special management order (or part thereof) with the intention of preserving or restoring the financial position of a credit institution, the Minister shall declare in the proposed order that the proposed order or part thereof is made with that intention in accordance with CIWUD. This section also sets out procedures to be followed in the event the Minister makes any such proposed special management order.

Section 14 — Special management orders provides that the Minister shall apply to the High Court for a special management order. This section also provides for related provisions, including the manner of the application (*ex parte*), the evidence which the High Court may hear, and the test to be applied by the High Court in making the special management order. If in a proposed special management order the Minister has declared the intention of preserving or restoring the financial position of the credit institution, and the High Court is satisfied that the proposed order or part of it is made with that intention, the High Court shall declare in the relevant special management order that the order or part thereof is a reorganisation measure so as to be recognised across the EU, in reliance upon CIWUD. The section also provides that the High Court may in specified circumstances amend or vary a special management order from that proposed by the Minister, and that a special management order is effective immediately on its making.

Section 15 — Application to vary special management order provides that the Minister may apply to the High Court to vary a special management order if the Minister is of the opinion that the variation is necessary to achieve a purpose of the Bill.

Section 16 — Application to set aside special management order provides that the relevant institution or a member of it may apply to the High Court, within a specified period, to have a special management order set aside. On any such application, the High Court may in specified circumstances set the order aside or may, if considered appropriate in certain circumstances, amend or vary the special management order. If a special management order is set aside, the special manager remains entitled to the payment of all his or her costs, expenses and remuneration, and the termination does not render invalid anything done by the special manager under the special management order.

Section 17 — Terms of appointment provides that a special manager shall be appointed on the terms and conditions set out in the special management order for a term of six months.

Section 18 — Remuneration, etc. of special managers provides that a special management order shall fix the basis of the calculation of the costs, expenses and remuneration payable to the special manager. This section also provides that a special manager is entitled to be paid out of funds available to the relevant institution.

Section 19 — Resignation and vacancy in office, etc. provides that a special manager may resign by giving two months' written notice to the Minister, or may be removed by the Minister for any reason. This section also provides that any such removal or resignation will not terminate the special management, and the Minister may appoint another in place of a special manager who so resigns or is removed.

Section 20 — Functions of special managers provides that a special manager will take over the management of the business of the relevant institution and carry on that business as a going concern with a view to preserving and restoring the financial position of the relevant institution or the whole or any part of its business. A special manager will take such steps as he or she determines are appropriate, to remedy the matters that led to the making of the special management order. This section also specifies general and specific powers of a special manager, including the ability to substitute the decision of a special manager for any decision that would otherwise be made by the shareholders, and any such decision will be taken to be the decision of the shareholders. A special manager will provide such reports and other information as are requested to the Central Bank and the Minister.

Section 21 — Performance of functions of special managers provides that a special manager may appoint or employ persons to assist him or her. This section also provides that a special manager may apply to the High Court, with the consent of the Minister, to determine any question arising in the course of the special management.

Section 22 — Effect of appointment of special manager provides that, while a relevant institution is under special management, the prior consent in writing of the Minister is required for a number of actions concerning the institution including its winding up or the appointment to the relevant institution of an examiner, inspector or receiver. Additionally, any party (other than the Minister) wishing to enforce security over some or all of the assets of the relevant

institution must give the Minister prior notice of a period not less than that specified in the Bill. In specified instances, a number of the restrictions laid down in this section will not apply to the Central Bank, the European Central Bank or another national central bank within the Eurosystem. This section also provides that the functions of the directors and, with the prior consent in writing of the Minister, the powers of the relevant institution exercisable by general meeting may only be exercisable by the special manager; and that the business of a relevant institution under special management shall continue without interruption as a going concern during the period of special management.

Section 23 — Powers of special manager to remove officers, employees and others provides that the special manager may, with the consent of the Minister, and shall, if so directed by the Minister, remove a director, secretary, officer, employee or consultant of a relevant institution or any of its subsidiaries. This section also provides for related matters.

Section 24 — Relationship between special managers and directors provides that the special manager shall determine the role (if any) and remuneration (if any) of the directors and officers of the relevant institutions and its subsidiaries during the special management.

Section 25 — Special manager not to be director, etc. provides that a special manager shall not be taken to be a director, shadow director or de facto director of the relevant institution or its subsidiaries.

Section 26 — Extension of special management provides that the special management of an institution may be extended in the circumstances specified in the Bill.

Section 27 — Termination of special management provides that the special management and the appointment of a special manager terminate on the making of a order winding up the relevant institution or appointing an examiner to it, or otherwise by order of the Minister.

PART 4

SUBORDINATED LIABILITIES

Section 28 — Proposed subordinated liabilities orders provides that the Minister may make a proposed subordinated liabilities order relating to the subordinated debt of a relevant institution to which the Minister has provided or intends to provide financial support under the Credit Institutions (Financial Support) Act 2008 providing for one or more of a number of specified matters including the modification of rights as regards the payment of interest, the repayment of principal, events of default, the timing of obligations, etc. In addition, a proposed subordinated liabilities order may grant a shareholding in a relevant institution to some of the subordinated creditors affected.

A proposed subordinated liabilities order may be made only where the Minister is of the opinion, having consulted with the Governor of the Central Bank, that making a subordinated liabilities order is necessary for preserving or restoring the financial position of the relevant institution with the consequence of affecting the rights of subordinated creditors. In making any such proposed subordinated liabilities order the Minister must have regard to such of a list of matters as the Minister considers appropriate. These matters include

the amount of indebtedness of the relevant institution to its subordinated creditors relative to its assets, the extent and nature of financial support provided or to be provided to the relevant institution, the likely extent to which the subordinated creditors would be repaid amounts owing to them in a winding up of that institution in the absence of such financial support *etc.*

This section also sets out procedures to be followed in the event the Minister makes any such proposed subordinated liabilities order.

Section 29 — Subordinated liabilities orders provides that the Minister shall apply to the High Court for a subordinated liabilities order. This section also provides for related provisions, including the manner of the application (*ex parte*), the evidence which the High Court may hear, and the test to be applied by the High Court in making the subordinated liabilities order. Subordinated liabilities orders can be imposed as reorganisation measures so as to be recognised across the EU, in reliance upon CIWUD. The section also provides that the High Court may in specified circumstances amend or vary the subordinated liabilities order from that proposed by the Minister.

Section 30 — Application to vary subordinated liabilities order provides that the Minister may apply to the High Court to vary a subordinated liabilities order if the Minister is of the opinion that the variation is necessary to achieve a purpose of the Bill.

Section 31 — Application to set aside subordinated liabilities provides that the relevant institution or a subordinated creditor of that institution may apply to the High Court, within a specified period, to have a subordinated liabilities order set aside. On any such application, the High Court may in specified circumstances set the order aside or may, if considered appropriate in certain circumstances, amend or vary the subordinated liabilities order.

Section 32 — Certain rights of subordinated creditors not exercisable provides that no proceedings may be instituted and no petition to wind up may be brought by a subordinated creditor of a relevant institution in relation to which a subordinated liabilities order has been made based upon a failure of that institution to honour the terms of a subordinated liability if the relevant institution is in compliance with the terms as modified by a subordinated liabilities order. The section also provides that no subordinated creditor of a relevant institution in relation to which a subordinated liabilities order has been made may exercise or claim a right of set-off in respect of any amount arising under or in connection with the relevant subordinated liabilities.

PART 5

TRANSFER OF ASSETS AND LIABILITIES

Section 33 — Proposed transfer orders provides that the Minister may make a proposed transfer order. The Minister may propose a transfer order only where the Minister, having consulted with the Governor of the Central Bank, is of the opinion that making such an order is necessary for achieving a purpose of the Bill, as specified in the proposed order. If the Minister makes a proposed transfer order (or part thereof) with the intention of preserving or restoring the financial position of a credit institution, the Minister shall declare in the proposed order that the proposed order or part is made with that intention, in accordance with CIWUD. A transfer order shall

contain such terms and conditions as the Minister may propose to fix, and such incidental, consequential and supplemental provisions as the Minister considers appropriate. This section also sets out procedures to be followed in the event the Minister proposes any such transfer order.

Section 34 — Transfer orders provides that the Minister shall apply to the High Court for a transfer order. This section also provides for related provisions, including the manner of the application (*ex parte*), the evidence which the High Court may hear, and the test to be applied by the High Court in making the transfer order. If in a proposed transfer order the Minister has declared the intention of preserving or restoring the financial position of the credit institution, and the High Court is satisfied that the proposed order or part of it was made with that intention, the High Court shall declare in the transfer order that the order or part is a reorganisation measure so as to be recognised across the EU, in reliance upon CIWUD. This section also provides that the High Court may in specified circumstances amend or vary the transfer order from that proposed by the Minister, and that save in specified circumstances, a transfer order has immediate effect.

Section 35 — Application to vary transfer order provides that the Minister may apply to the High Court to vary a transfer order if the Minister is of the opinion that the variation is necessary to achieve a purpose of the Bill.

Section 36 — Application to set aside transfer order provides that the relevant institution or a member of it may apply to the High Court, within a specified period, to have a transfer order set aside. On any such application, the High Court may in specified circumstances set the order aside or may, if considered appropriate in certain circumstances, amend or vary the transfer order. In the event of an order under this section, no previous dealings by the transferee are rendered invalid.

Section 37 — Content of transfer order specifies the information to be included in a transfer order. This section also provides for related matters, including that a transfer order may relate to all or any part of a relevant institution's assets and/or liabilities and shall be on such terms as the Minister shall fix. This section also provides that the transferee is required to be a person that has agreed to accept the transfer on the terms set out in the order.

Section 38 — Financial incentive to transferee provides that the Minister may provide a financial incentive to any person to become a transferee, including by way of payment, loan, guarantee, exchange of assets and other financial support, and may enter into transactions of a normal banking nature in connection with or related to the provision of such a financial incentive. Any such financial assistance provided is a debt due and owing to the State by the transferor.

Section 39 — Effect of transfer order — general provides that a transfer order has effect subject to any term or condition specified in it and that the assets and liabilities specified in the transfer order are acquired by the transferee on the date specified in the order. The transferee acquires the same rights and obligations as the transferor held immediately prior to the transfer. This section also provides for related matters, including that the transfer of assets and liabilities pursuant to a transfer order will take effect notwithstanding any enactment, rule of law, code of practice or agreement requiring notice be provided to any person, or requiring any person's consent or approval.

Section 40 — Effect of transfer order in relation to securities makes specific provision for matters related to specific security transferring to the transferee under a transfer order and, in particular, provides that a transferee is not required to become registered as owner of such security but will notwithstanding acquire specified powers of a registered owner.

Section 41 — Transfer of foreign assets and liabilities makes specific provision for the transfer of foreign assets or liabilities under a transfer order where a transfer order is not recognised or fully effective by providing that (a) if the law governing the transfer or assignment of a liability or an asset permits such transfer or assignment, the transferor will do everything required to effect the transfer or assignment or (b) if the relevant foreign law does not permit the transfer or assignment of a liability, the transferee shall be responsible for discharging the transferor's obligations and (c) if the relevant foreign law does not permit the transfer or assignment of an asset, the transferor shall do all that the transferor is permitted to do under that law to assign to the transferee the greatest interest possible in the asset and shall hold the asset for the benefit of and at the direction of the transferee. This section also provides for related matters.

Section 42 — Application of Bankers' Books Evidence Act 1879 provides that the Bankers' Books Evidence Act 1879 applies with respect to any books of the transferor transferred in connection with a transfer order.

Section 43 — Stamp duty provides that stamp duty shall not be chargeable on a transfer order, an order varying or amending a transfer order, an order setting aside a transfer order or any ancillary agreement.

PART 6

GENERAL MATTERS IN RELATION TO COMPANIES, ETC.

Section 44 — Minister's powers in relation to removal of directors, etc. provides that the Minister may by written notice remove a director or officer of a relevant institution, or terminate the employment of a person by that institution. This section also provides for related matters.

Section 45 — Minister's powers in relation to appointment of directors, etc. provides that, with the consent of the Governor of the Central Bank, the Minister may appoint a person as director of a relevant institution upon such terms and conditions as the Minister determines. A person so appointed may only be removed from office by the Minister.

Section 46 — No resolution required, etc. provides that the approval by resolution of members for the taking of any action by a relevant institution, its directors or, where appointed, special manager shall not be required in relation to any action which a relevant institution, its directors or a special manager is required to take under the Bill. This section also invalidates any resolution of members that prevents the taking of any such action.

Section 47 — Certain provisions may be included in orders provides that an order made under the Bill may provide that any powers exercisable by the members of a relevant institution in a general

meeting can be exercised by the Minister, and such an exercise shall be taken to have been that of the members.

Section 48 — Directors' duties provides that the directors of a relevant institution owe an over-riding duty to the Minister, on behalf of the State, to have regard to certain purposes of this Bill. The Minister may disapply this section for a particular relevant institution where the Minister is of the opinion that the duty provided for under this section is no longer necessary.

Section 49 — Minister not to be a director, etc. provides that the Minister or his nominee shall not (only by reason of any action taken under this Bill) be taken to be a director, shadow director or de facto director etc. of a relevant institution, any of its subsidiaries or any holding company.

Section 50 — Minister's powers to impose requirements on relevant institutions provides that the Minister may impose certain specified requirements on a relevant institution if the Minister is of the opinion that this is necessary to achieve any of the purposes of the Bill. If the relevant institution does not comply with the requirement, there is provision for the Minister to apply to the High Court for an order compelling compliance.

PART 7

MISCELLANEOUS

Section 51 — Minister may impose certain conditions in relation to financial support provides that nothing in this Bill or any other enactment, and no rule of law, prevents the Minister, when providing a financial support, from imposing any terms and conditions which any other provider of financial support would be entitled to impose, or which the Minister considers desirable to impose in order to protect the public interest. This section also provides that in considering terms and conditions concerning bonus payments to employees and officers that the Minister may have regard to certain factors, including the extent of financial support provided. The section also addresses other matters relating to such terms and conditions and their imposition.

Section 52 — Effect of CIWUD Directive provides that any order made under the Bill that is declared to have been made with the intention of preserving or restoring the financial position of a credit institution is intended to have effect in accordance with the CIWUD Directive and any law giving effect to it. The purpose of this is to provide that, in circumstances provided for by the Directive, orders made under this Bill which constituted reorganisation measures would be legally enforceable throughout Member States of the European Union.

Section 53 — Act, etc. to over-ride inconsistent provisions provides that, except to the extent to which the Bill expressly provides otherwise, the provisions of the Bill and any order made under it, will over-ride any other enactment, code of practice, rule of law or equity, applicable listing rules of a regulated market or of any other market on which the shares of a relevant institution may be traded, the memorandum or articles of association of a relevant institution and the provisions of any agreement by which a relevant institution, or any of its subsidiaries, is bound.

Section 54 — Application of laws in relation to transfers, etc., of credit institutions provides that Parts 2 and 3 of the Competition Act 2002 and section 7 of the Credit Institutions (Financial Support) Act 2008 do not apply to the issue of shares under a direction order, the appointment of a special manager, the acquisition or sale of assets or liabilities of the relevant institution by the special manager, or a transfer under a transfer order.

Section 55 — Orders in relation to particular relevant institutions provides that the Minister may by order declare that a particular institution will not be taken to be a relevant institution for the purposes of (i) a specified provision or provisions of the Bill, (ii) on fulfilment of a specified condition and (iii) for the duration of specified circumstances. To make any such order, the Minister, having consulted with the Governor of the Central Bank, must be of the opinion that any such order is necessary for certain specified purposes, including to promote the financial stability of a relevant institution, to facilitate the acquisition of an interest in a relevant institution by a person other than the State or to remove or reduce the likelihood of further State investment in the institution. The Minister shall lay a copy of any such order before each House of the Oireachtas.

Section 56 — Expression of intention in relation to exercise of powers in relation to particular relevant institutions provides that where the Minister, having consulted with the Governor of the Central Bank, is of the opinion in relation to a relevant institution that particular circumstances exist, he may express in writing to such persons as the Minister considers appropriate, an intention to the effect that he or she does not intend to exercise the powers or a specified power conferred by the Bill in relation to a specified relevant institution.

Section 57 — Minister's and Court's powers under this Act not exclusive of other powers provides that the powers of the High Court and of the Minister under a provision of the Bill are additional to other powers they have under any other provision of the Bill and other enactments and, in the case of the Minister, under the memorandum or articles of association of a relevant institution or any agreement.

Section 58 — Minister's powers to take certain proceedings in other jurisdictions provides that the Minister may institute proceedings in a place outside the State to enforce an order under this Bill.

Section 59 — Proposed orders to be kept in confidence provides that a person shall not, unless required to do so by enactment, publish the fact that the Minister has made, or proposes to make, an order under this Bill, save that a relevant institution may obtain professional advice in relation to any such order. A person that contravenes this section commits an offence.

Section 60 — Confidentiality of proceedings provides that the High Court may order that an application under this Bill (or any part of the application) be heard otherwise than in public and may impose restrictions on disclosure of commercially sensitive material.

Section 61 — Effect of orders on certain other obligations deals with agreements to which a relevant institution, any of its subsidiaries, its holding company and any sister company, are party or in which they have an interest. Agreements may provide for their termination or other consequences in certain circumstances. This section provides that none of the specified consequences will arise by virtue of certain

actions including, among others, the enactment of the Bill, the publication of the Bill, the making of any statement by the Minister, the Governor of the Central Bank or a relevant institution in relation to the Bill, and the use of any powers under the Bill.

Section 62 — Limitation of operation of section 61 provides that the Minister may, where he or she thinks it appropriate, by order reduce the effect of the restriction provided for in section 61 in relation to a particular case or a particular class of cases where the effect of the section would be unduly onerous, or cause unfairness or undue hardship and where, in all circumstances, it is appropriate to do so. This section also makes provision for related matters.

Section 63 — Limitation of judicial review provides for the circumstances (including timescales) in which leave to seek judicial review of a decision under the Bill may be sought and given.

Section 64 — Limitation of certain rights of appeal to the Supreme Court provides that the determination of the High Court of an application for leave to apply for judicial review, an application for judicial review, a direction order, a special management order, a subordinated liabilities order or a transfer order (or any varying order or any order setting it aside) is final except with the leave of the High Court.

Section 65 — Application of laws in relation to netting arrangements, etc. provides that the effects of certain specified laws in relation to agreements to which a relevant institution or any of its subsidiaries are party are not affected by anything in the Bill.

Section 66 — Saving of legal proceedings, etc provides that a transfer under a transfer order or any other thing done under an order or requirement made under this Bill will not affect or preclude any proceedings, investigation, disciplinary action or enforcement action in existence at the time of the transfer or other act taken or arising in respect of any contravention of an enactment or any misconduct committed prior to such transfer or action.

Section 67 — Prohibition of certain secured borrowings provides that a local authority, and other persons or bodies prescribed under this section, shall not encumber its assets or revenues to secure any present or future indebtedness, or any related guarantee or indemnity, without the consent of the Minister. Consent to this may only be granted where the Minister is satisfied that the relevant borrowing would not give right to a breach of an obligations to the “facility lenders”. This section also identifies the parties that are facility lenders for the purpose of the section.

Section 68 — Regulations provides that the Minister may make regulations to do anything that appears necessary or expedient to bring the Bill into operation. This section also makes provision for related matters.

Section 69 — Cessation of effect of Act provides that the Bill, other than section 67, shall cease to have effect on 31 December 2012, or a later date substituted by resolution of both Houses of the Oireachtas. Notwithstanding cessation, the provisions of the Bill shall remain effective to enforce, vary or terminate any continuing order or requirement.

Section 70 — Disapplication of section 7 of the Official Languages Act 2003 provides that section 7 of the Official Languages Act 2003 does not apply in relation to this Bill.

PART 8

AMENDMENT OF OTHER ENACTMENTS

Section 71 — Amendment of Building Societies Act 1989 provides that the Building Societies Act 1989 is amended as set out in Part 1 of Schedule 1.

Section 72 — Amendment of Central Bank Act 1942 provides that the Central Bank Act 1942 is amended as specified in Part 2 of Schedule 1.

Section 73 — Amendment of Central Bank Act 1971 provides that the Central Bank Act 1971 is amended as specified in Part 3 of Schedule 1.

Section 74 — Amendment of Act of 2008 provides that the Credit Institutions (Financial Support) Act 2008 is amended as specified in Part 4 of Schedule 1.

Section 75 — Amendment of National Asset Management Agency Act 2009 provides that the National Asset Management Agency Act 2009 is amended as set out in Part 5 of Schedule 1.

Section 76 — Amendment of National Pensions Reserve Fund Act 2000 provides for specified amendments to the National Pensions Reserve Fund Act 2000.

Section 77 — Amendment of Regulations of 2004 provides that the European Communities (Re-organisation and Winding-up of Credit Institutions) Regulations 2004 are amended as specified in Schedule 2, and that this does not prevent their further amendment or revocation by statutory instrument.

*An Roinn Airgeadais,
Nollaig, 2010.*