



**AN BILLE UM CHORPARÁID BAINCÉIREACHTA
STRAITÉISEACH NA hÉIREANN, 2014
STRATEGIC BANKING CORPORATION OF IRELAND BILL
2014**

EXPLANATORY MEMORANDUM

Purpose of the Bill

This Bill will enable the establishment a company called the Strategic Banking Corporation of Ireland (SBCI). The SBCI will lend strategically within the economy and will in particular focus on credit needs of SMEs in the first instance. Other areas of the economy whose credit needs are not fully served will also be helped in time by the SBCI which this Bill will establish.

The Bill facilitates funding of the SBCI from a range of sources, initially focussing on bilateral arrangements rather than market funding but transitioning to other forms of funding at a later date. In that regard the Bill provides for lending to the SBCI from the NPRF, an amount of equity being provided to the SBCI from the resources of the NPRF and for the extension of guarantees by the Minister covering certain borrowings of the SBCI.

The Bill also ensures appropriate accountability for the SBCI.

Detailed provisions of the Bill

The Bill has seven parts.

Part 1 — Preliminary and general sets out preliminary and general provisions.

Section 1 — Short title and commencement is a standard provision setting out the short title of the legislation (the Strategic Banking Corporation of Ireland Act 2014) and that it will come into operation by order from the Minister.

Section 2 — Purposes of Act sets out the purposes of the Bill. The main purpose of the Bill is to improve the availability of credit to enterprises and other persons in a manner that generates economic benefits. This will be achieved by the formation of a state development institution — the Strategic Banking Corporation of Ireland (SBCI). This company will seek to remedy a disturbance to the economy caused by a disrupted and uneven flow of credit to enterprises and individuals in the state.

One of the purposes of the Bill that supports the above is the empowerment of the Minister to guarantee the borrowings of the SBCI.

The Bill will also protect the interests of tax payers and contribute to the economic development of the State.

Section 3 — Definitions is a standard provision providing definitions for certain words and terms used in the Bill. The “Minister” means the Minister of Finance and “the SBCI” means the Strategic Banking Corporation of Ireland.

Section 4 — Expenses provides for expenses incurred by the Minister in *administration* of this legislation to be sanctioned by the Minister for Public Expenditure and Reform and be paid out of moneys provided by the Oireachtas.

Part 2 — Establishment of the SBCI provides the establishment of the SBCI company and other matters related to that.

Section 5 — Formation of the Strategic Banking Corporation of Ireland provides for the formation of a private company under the Companies Acts, to name it the Strategic Banking Corporation of Ireland and for the company to be independent in carrying out its functions.

It allows for the Company to use the word “Banking” in its name by dis-applying sections 7(1), 8 and 15 of the Central Bank Act 1971, and exempts the SBCI’s name from having to end with the suffix “Ltd.”.

Section 6 — Formation of group entities provides for the SBCI to be able to form various types of subsidiaries such as companies or joint ventures etc. It also provides the terms on which this can be done. Group entities are defined in section 3 of the Bill.

Section 7 — Memorandum and articles of association of the SBCI provides that the memorandum and articles of association of the company when formed will be consistent with the provisions of the legislation. It also provides that no alterations to those documents will be valid without the prior approval of the Minister.

Section 8 — Functions of the SBCI sets out the functions of the SBCI. The main functions of the SBCI are to promote and facilitate the availability of credit in the State suitable to the needs of borrowers, to encourage effective competition in the provision of credit in the State, and to pursue economic development and to contribute to the international competitiveness of the economy of the State.

The functions of the SBCI also includes providing additional credit in the state in a prudent manner and to source the appropriate funding to allow the SBCI to lend. The SBCI will also seek to improve the credit market in a number of specific ways and to provide credit and finance to projects that will contribute to economic activity in the State.

While carrying out its functions under this section the SBCI shall so far as possible seek to obtain a positive financial return for the state.

Section 9 — Board of the SBCI provides for the SBCI to have a Board of not more than nine members including a Chairperson. It sets out that the first Directors on incorporation will be appointed by the Minister and that subsequent Boards will be appointed by the SBCI in accordance with the terms and conditions of appointment which will be set out in the memorandum and articles of association

of the SBCI. The Minister will continue to appoint the Chairperson from within the board.

Section 10 — The SBCI's relationship with NTMA provides for the SBCI's relationship with the NTMA. It sets out that the NTMA will provide the SBCI with business and support services and allows the NTMA to supply those services either directly or indirectly.

This section also provides that the NTMA will assign staff to the SBCI to enable it to carry out its functions under the Bill.

Under this section the NTMA may also supply the SBCI with treasury services and advice on treasury service matters.

The NTMA may enter into transactions of a normal banking nature as an agent of the SBCI.

The NTMA will be reimbursed by the SBCI for costs incurred under this section.

Part 3 — Funding of the SBCI sets out the funding arrangements of the SBCI.

Section 11 — Share capital of SBCI provides for the determination of the authorised share capital of SBCI by the Minister for Finance, and for the initial issue of shares in the new company to that Minister. It also provides that the SBCI will issue shares to the value of €10,000,000 to the minister. The €10,000,000 equity capital will come from the NPRF. The authorised share capital will be €250,000,000 or a higher amount as the Minister may decide. The share capital is capped at a maximum of €1,000,000,000. If the SBCI determines that further equity is required to meet its financial obligations as they fall due, it may issue further share capital to the Minister in exchange for the conversion of the outstanding loans from the NPRF or out of the Central Fund or a combination of both. Any changes to the share capital will be put before the Oireachtas.

Section 12 — Alienation of shares by Minister provides that the Minister can dispose of shares in the SBCI as the Minister deems appropriate. Any funds received for the shares will go to the exchequer. If the Minister is disposing of shares in SBCI, the reasons for the disposal must be given to Dáil Éireann.

Section 13 — Borrowings by SBCI provides that the SBCI may borrow money in any currency through any type of debt it sees as appropriate. This section limits the amount the SBCI can borrow to €4,000,000,000. The value of borrowings in other currencies will be valued using the European Central Bank's published exchange rates. This section allows the SBCI to engage in transactions of a normal banking nature for the purposes of carrying out its functions.

Section 14 — Amendment of section 54 of Finance Act 1970 and First Schedule to National Treasury Management Agency Act 1990 provides for an amendment to section 54 of the Finance Act 1970. This amendment allows the Minister to engage in normal banking transactions with the SBCI. Under this section the Minister may issue funds from the Exchequer for the purposes of those transactions and any associated costs arising out of those transactions.

Section 15 Directions by Minister to National Pension Reserves Fund Commission provides for the Minister to give directions to the National Pensions Reserve Fund Commission which the Commission must comply with. Under this section the Minister may direct the

Commission to provide credit to the SBCI, to exercise any rights based on a direction, and to terminate terms of a direction. A direction may also be issued to provide funding to the SBCI to fund the subscription of the Minister's shares in the Company.

Section 16 — Maximum amount of funding to the SBCI sets out the maximum amount of funding that can be provided by the Minister to the SBCI which is €5,000,000,000. It explains how the SBCI can be funded.

Section 17 — Payment of Dividends provides that the SBCI Board will decide what dividends are to be paid to the Minister. It also provides that any moneys received by the Minister in respect of his share in the Company including dividends shall be paid into the Exchequer in such a manner as the Minister directs.

Part 4 — Ministerial Guarantees sets out the procedures for and restrictions on the issuing of any guarantees by the Minister on the borrowings of the SBCI.

Section 18 — Minister may issue guarantees gives the Minister the power to guarantee any moneys borrowed by the SBCI up to a maximum of €4,000,000,000 aggregate of all guarantees outstanding (exclusive of accrued interest). This section also provides that the use of any guarantee issued under this section will be laid before each House of the Oireachtas as soon as may be after it is made.

Part 5 — Procedures for ensuring public accountability sets out the procedures for ensuring public accountability.

Section 19 — Audit of accounts by Comptroller and Auditor General provides that SBCI must submit its accounts to the Comptroller and Auditor General for audit within two months after the end of the financial year to which they relate. The audited accounts will be laid before both Houses of the Oireachtas.

Section 20 — Accountability to Committee of Public Accounts provides that a senior member of the staff of the SBCI nominated by its Chairperson will, whenever required by the Committee of Dáil Éireann established to examine and report to Dáil Éireann on the accounts and reports of the Comptroller and Auditor General, give evidence to that committee on the matters specified in this section.

Part 6 — Miscellaneous sets out two miscellaneous provisions.

Section 21 — Certain persons not to be shadow directors provides that the Minister, the NTMA, and its employees and staff are not to be considered either a shadow director under section 27(1) of the Companies Act 1990 or a de facto director of the SBCI. It is intended that the board of the NTMA is covered here.

Section 22 — Disapplication of certain sections of Companies Acts provides that certain provisions of the Companies Act will not apply to the SBCI. These provisions are section 60 (1) of the Companies Act 1963, section 26 (6) of the Companies Act 1990 and Part IV of the Companies Act 1990.

Part 7 — Tax exemptions sets out a number of tax exemptions which will apply to the SBCI and any investment vehicle or subsidiary which is wholly owned by the SBCI as long as the Minister for Finance remains the sole shareholder and therefore the sole beneficiary of such tax exemptions.

Section 23 — Tax exemptions provides that income and gains arising to the SBCI or a wholly owned subsidiary of the SBCI will be exempt from Dividend Withholding Tax, Corporation Tax, DIRT, Interest withholding tax, Capital Gains Tax and Stamp Duty.

*An Roinn Airgeadais,
Iúil, 2014.*