

# Bill Digest

Home Building Finance Ireland Bill 2018

No. 58 of 2018

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### **Abstract**

The <u>Home Building Finance Ireland Bill 2018</u> proposes the establishment of a Designated Activity Company called Home Building Finance Ireland (HBFI) to increase the level of debt funding available for residential development. The Bill seeks to amend the <u>National Treasury Management Agency (Amendment) Act 2014</u> to insert a provision allowing for the NTMA to provide up to €750 million in funds to HBFI. A further €750 million may also be borrowed by HBFI, if necessary, from the private financial markets. The effect of the Bill will be to increase the level of debt funding available to residential property developers, for the purpose of funding the construction of new residential properties.



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Bill published 18 June 2018: Second Stage Debate 04 July 2018 and 05 July 2018.

This Digest may be cited as:

Oireachtas Library & Research Service, 2018. Bill Digest - Home Building Finance Ireland Bill 2018

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### **Summary**

The <u>Home Building Finance Ireland Bill 2018</u> proposes the establishment of a company called Home Building Finance Ireland (HBFI) to increase the level of debt funding available for residential development. The Bill aims to increase the availability of debt funding, on commercial terms, to viable residential development projects in the State in response to the current shortfall in the supply of housing. The Bill also seeks to grant the necessary power to the National Treasury Management Agency (NTMA) to provide cost recoverable resources (staff and services) to HBFI and to grant the necessary powers to HBFI to enable it to accomplish its objectives. Debt financing provided by HBFI will be in addition to the National Asset Management Agency's (NAMA) current housing delivery programme.<sup>1</sup>

### **Construction and finance**

One issue affecting the construction of new homes is the difficulty construction companies are reportedly facing in accessing funds required to deliver residential housing projects. A survey conducted by RSM and Construction Industry Federation (2017)<sup>2</sup> found that 63 per cent of those that sought to borrow from financial institutions in the past twelve months reported difficulty in securing finance.

The current shortfall in the supply of housing is estimated to be between 15,000 and 20,000 per year.<sup>3</sup> The Department of Finance Information Note states that an allocation of €750 million to HBFI would provide HBFI with the resources to fund the development of 6,000 new residential units. Assuming a three year horizon,<sup>4</sup> HBFI has the capacity to reduce the annual shortfall in the supply of housing by 2,000 per annum, or between 10 and 13.3 per cent.

A visual representation of the undersupply of new houses can be seen in figure 1 overleaf. Figure 1 provides a comparison of house prices and new house completions between 1997 and 2016. Both increased substantially between 1997 and 2007 before falling during the economic financial crisis. The average price of houses has since recovered and is rising back to its pre-crisis peak with new completions remaining significantly below demand.

<sup>&</sup>lt;sup>1</sup> National Asset Management Agency Press Statement (October 2015) "NAMA Residential Delivery Programme 2016-2020". Available at: <a href="https://www.nama.ie/about-us/news/news-detailed-view/news/nama-residential-delivery-programme-2016-2020/">https://www.nama.ie/about-us/news/news-detailed-view/news/nama-residential-delivery-programme-2016-2020/</a>

<sup>2016-2020/</sup>RSM and CIF (2017) "Construction Sector Access to Finance". Available at: <a href="https://cif.ie/wp-content/uploads/2017/10/RSM-CIF-Access-to-Finance.pdf">https://cif.ie/wp-content/uploads/2017/10/RSM-CIF-Access-to-Finance.pdf</a>

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<sup>&</sup>lt;sup>3</sup> Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: <a href="http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf">http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf</a>
<sup>4</sup> This assumption is made in the Department of Finance Information Note.

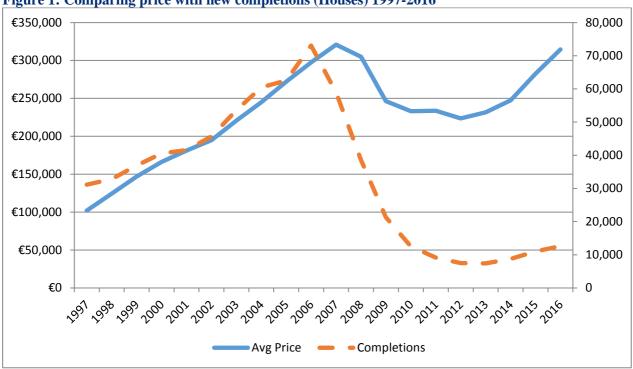


Figure 1: Comparing price with new completions (Houses) 1997-2016

Source: Department of Housing "House Price Statistics" and "ESB Connections".

The above graph is based on new ESB connections to the grid. A criticism of this measure<sup>5</sup> has led to the creation of a new series of data produced on a quarterly basis dating back to 2011. This series is not used in the above graph as the data does not date back pre 2011.6 However total new completions from 2011 to 2017 can be found below.

Table 1: Housing completions – ESB connections v CSO measure

|                       | Total (New CSO          |          | Difference |
|-----------------------|-------------------------|----------|------------|
|                       | Total (ESB connections) | measure) |            |
| 2011                  | 10,480                  | 6,994    | -3,486     |
| 2012                  | 8,488                   | 4,911    | -3,577     |
| 2013                  | 8,301                   | 4,575    | -3,726     |
| 2014                  | 11,016                  | 5,518    | -5,498     |
| 2015                  | 12,666                  | 7,219    | -5,447     |
| 2016                  | 14,932                  | 9,915    | -5,017     |
| 2017                  | 19,271 14,446           |          | -4,825     |
| 2018 (First 2         |                         |          |            |
| months/quarter) 3,158 |                         | 3,526    | 368        |

9,915 new housing units were constructed in 2016 according to the CSO New Dwellings Completion (Q1 2018). There was a 45.7 per cent increase in the supply of new housing units

<sup>&</sup>lt;sup>5</sup> See appendix 1.

<sup>&</sup>lt;sup>6</sup> CSO statistical publication (14 June 2018) "New Dwelling Completions Q1 2018". Available at: https://www.cso.ie/en/releasesandpublications/ep/p-ndc/newdwellingcompletionsq12018/ Ibid.

between 2016 and 2017, to 14,446 new dwellings. This will likely reduce the shortfall in housing supply.

### What the Bill proposes to do

The specific aim of the Bill is to establish HBFI to make available debt funding to qualifying developers building viable residential developments in the State. Up to €750 million in funds may be provided by the NTMA to HBFI to tackle the annual shortfall in the supply of housing. It is believed these funds will provide the capacity to finance an extra 6,000 homes, with an annual average delivery of 2,000 new homes (assuming a three year horizon).<sup>8</sup> Up to an additional €750 million may also be raised by borrowing through the private financial markets to fund the delivery of extra homes if needed.

The Bill provides that HBFI's may "lend money for the purpose of funding residential development in the State, provided that such lending shall be on commercial terms". However, it does not state the interest rate to be charged, or the loan-to-cost tate available to developers from HBFI. Residential property developers can currently apply for debt financing through a number of lenders. For example, Bank of Ireland and AIB offer residential debt financing under the following terms: an interest rate of approximately seven per cent and a loan-to-cost ratio between 60 and 65 per cent. However, it does not state the interest rate of approximately seven per cent and a loan-to-cost ratio between 60 and 65 per cent. However, it does not state the interest rate of approximately seven per cent and a loan-to-cost ratio between 60 and 65 per cent.

Minister for Finance Paschal Donohoe has stated that developers availing of market-rate loans from HBFI would have the same obligations applied to commercial deals. The Minister stated that the rates will not be lower than that of existing bank rates to ensure that the scheme does not merely offer cheaper loans to developers.<sup>12</sup>

Another aspect of the proposed HBFI is that it will be established as a <u>Designated Activity</u> <u>Company</u> (DAC)<sup>13</sup> limited by shares (section 4 of the Bill). Up to €20 million in shares has to be allocated to the Minister, paid for through the €750 million in funds provided by the NTMA.

<sup>&</sup>lt;sup>8</sup> Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: <a href="http://www.budget.gov.ie/Budgets/2018/Documents/Budget 2018 Information Note Housing Finance Proposal.pdf">http://www.budget.gov.ie/Budgets/2018/Documents/Budget 2018 Information Note Housing Finance Proposal.pdf</a>
<sup>9</sup> Section 7 of the *Home Building Finance Ireland 2018* Bill.

The percentage of total cost that the bank or financial institution is willing to lend.

<sup>11</sup> AIB Housing Supply Report (2018) "Housing Supply in Ireland – Highlighted issues and suggestions". Available at: https://aib.je/content/dam/aib/corporate/docs/real-estate-finance/aib-housing-supply-report-2017 pdf

https://aib.ie/content/dam/aib/corporate/docs/real-estate-finance/aib-housing-supply-report-2017.pdf

12 Irish Examiner (31 January 2018) €750m Nama-run fund aims to build 6,000 homes". Available at: https://www.irishexaminer.com/ireland/750m-nama-run-fund-aims-to-build-6000-houses-466500.html

<sup>&</sup>lt;sup>13</sup> Companies are likely to be incorporated as a DAC if the purpose of the company is to complete a specific sole purpose for legal reasons.

## **Table of Provisions**

The table below summarises the provisions of the *Home Building Finance Ireland Bill 2018*.

| Table 2: Summary of the Bill's provisions |  |   |  |
|---|--|---|--|
| Parts                                     | Title  | Effect  |  |
| 1. Preliminary and General                | Short title and commencement (Section 1)                     | Standard provision defining the proposed Act's short title and providing for commencement by Ministerial order.   |  |
|   | Definitions (Section 2)                                      | Standard provision defining terms.  |  |
|   | Expenses (Section 3)   | Provides for expenses incurred in administration of the Act by the Minister for Finance to be paid out of monies provided by the Oireachtas; and expenses incurred by the NTMA to be paid out of the Central Fund.  |  |
| 2. HBFI                                   | Formation of Home<br>Building Finance<br>Ireland (Section 4) | Requires the Minister for Finance to form a company limited by shares to be registered under Part 16 of the Companies Act 2014.   |  |
|   | Constitution of HBFI (Section 5)                             | Provision designates that the constitution of HBFI will take a form approved by the Minister.   |  |
|   | Group entities of HBFI (Section 6)                           | Allows for HBFI, with the consent of the Minister, to promote, form, or acquire a shareholding in a HBFI group entity.  |  |
|   | Functions of HBFI<br>(Section 7)                             | Sets out the functions to be undertaken by HBFI; including the provision of debt funding, on commercial terms, for the purpose of funding residential development in the State.   |  |
|   | Board of HBFI<br>(Section 8)                                 | Provisions providing for HBFI to have a board of between three and seven directors (including its chairperson), as appointed by the Minister.   |  |
|   | Services, systems<br>and staff of HBFI<br>(Section 9)        | Provides that the NTMA will provide HBFI and any HBFI group entity with such services and systems (including officers), on a cost recoverable basis, as HBFI reasonably determines necessary, for HBFI to perform its functions. Where the NTMA are unable to provide such services etc. these may be procured.  Provides for declarations of interest to be made by staff of NTMA assigned to HBFI or a HBFI group entity. |  |
| 3. Funding of<br>HBFI                     | Share Capital<br>(Section 10)                                | Provides for the issuance of authorised share capital of HBFI to the Minister, with a total nominal value of €20 million.   |  |
|   | Alienation of shares<br>by Minister (Section<br>11)          | Shares in HBFI may be held by the Minister for as long as is determined necessary. The Minister may sell, transfer, or dispose of shares to the NTMA, the Minister for Housing, Planning and Local Government, or a body under the aegis of the Minister for Housing; for the benefit of the Exchequer.   |  |

| Parts   | Title  | Effect   |
|---|--|--|
|   | Payment of dividends (section 12)  | Dividends paid to the Minister in respect of shares held in HBFI must be paid into or disposed of for the benefit of the Exchequer.  |
|   | Borrowing by HBFI (Section 13)   | Provides for the borrowing of money in any currency by HBFI and any HBFI group entity through the issuance of bonds, debentures or other securities up to a maximum of €750 million.   |
| 4. Financial Statements and Public Accountability | Interpretation<br>(Section 14)   | Provides that reference to a HBFI group entity means a HBFI group entity which is a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act.  |
|   | Preparation and audit of statutory financial statements of HBFI and HBFI group entities (Section 15) | Provides that consolidated financial statements shall be submitted by HBFI to the Comptroller and Auditor General for audit within 2 months of the end of each financial year. A copy of which will be presented to the Minister to be laid before each House of the Oireachtas.   |
|   | Appointment of statutory auditor or firm (Section 16)  | Provides that a recognised statutory auditor under the 2016 Audit Regulations may be appointed if determined necessary by the Board of HBFI, following consultation with the Minister.   |
|   | Accountability to<br>Committee of Public<br>Accounts (Section 17)                                    | Provides that the HBFI will nominate a person, when required, to give evidence and report to the Public Accounts Committee on the accounts and reports of the HBFI.  |
| 5. Consequential<br>Amendments                    | Amendment of section 246 of Taxes Consolidation Act 1997 (Section 18)                                | Provides that interest paid to or by HBFI or a wholly owned subsidiary of HBFI is exempt from interest withholding tax.  |
|   | Amendment of National Treasury Management Agency (Amendment) Act 2014 (Section 19)                   | Amends the National Treasury Management Agency (Amendment) Act 2014 to allow the Minister to direct the Agency to provide funding to HBFI or any HBFI group entity, not to exceed €750 million.  |
| 6. Miscellaneous<br>Provisions                    | Shadow directors<br>(Section 20)   | Provides that the Minister, the NTMA (including staff), NAMA (including officers), or HBFI (including officers) cannot be deemed to be either shadow directors or de facto directors of HBFI.  |
|   | Disclosure of confidential information (Section 21)  | Provides that it is an offence, with various exceptions, for certain persons including a board member, member of staff of HBFI or HBFI group entity, or an advisor to HBFI to disclose confidential information. A person who commits such an offence is liable on summary conviction to a fine up to €5,000 and/or up to 6 months imprisonment.  Conviction on indictment may result in a fine and/or up to 2 years imprisonment. |
|   | Power of Minister to   | Provides the Minister with the power to issue  |

| Parts | Title  | Effect  |
|-------|--|---|
|       | give directions<br>(Section 22)  | directions to HBFI consistent with the functions of HBFI. HBFI must comply with any such direction and the Minister must cause the direction to be published in <i>Iris Oifigiuil</i> and laid before the Houses of the Oireachtas.   |
|       | Review of achievement of purposes of HBFI (Section 23)                     | Provides for the Minister to at any time require HBFI to report to him or her regarding progress made in relation to the achievement of HBFI's purposes. Provides that the Minister must after 31 December 2020 and every 2 years thereafter prepare a report assessing the performance of HBFI of its functions, its impact, and the decision of the Minister as to whether HBFI should continue to operate. |
|       | Communications with HBFI (Section 24)                                      | Provides that it is an offence for a person to communicate, on behalf of another person, with HBFI, a HBFI group entity or a person providing services to HBFI with the intention of influencing the making of a decision in relation to the performance of functions of HBFI or a HBFI group entity.   |
|       | Disapplication of certain provisions of Companies Act to HBFI (Section 25) | Excludes HBFI from certain provisions of the Companies Act 2014, specifically the presumption that the sole member of a single member company is a person connected with the director, the disclosure of interest in shares and debentures, and the requirement to include "DAC" after the name of HBFI.  |

### Introduction

The <u>Home Building Finance Ireland Bill 2018</u> (hereafter 'the Bill') was published on 18 June 2018. According to the <u>Explanatory Memorandum</u>, its purpose is:

"...to provide for the establishment of a company called Home Building Finance Ireland (HBFI) to increase the availability of debt funding for residential development in the State. HBFI will provide financing to developers seeking to build viable residential development projects in Ireland on commercial, market equivalent terms and conditions.

The Bill facilitates funding of HBFI from resources currently held by the Irish Strategic Investment Fund (ISIF)<sup>14</sup>, the granting of the necessary power to the National Treasury management Agency (NTMA) to provide staff and services to HBFI on a cost recoverable basis, the granting of specific powers to HBFI to enable it to carry on the business of residential development finance, and ensures appropriate accountability for HBFI."<sup>15</sup>

Minister for Finance and Public Expenditure & Reform Paschal Donohoe stated that HBFI "will be a welcome boost to developers with viable sites who are experiencing difficulty in obtaining funding."<sup>16</sup>

Minister for Housing, Planning & Local Government Eoghan Murphy added:

"This is an important initiative with the potential to provide the necessary financial support, in particular for small and medium-sized developers and builders, to maximise the capacity in the building sector to deliver new homes, especially in our urban areas where the demand and affordability challenges are greatest." <sup>17</sup>

Up to €750 million in funds may be provided by the NTMA to HBFI to tackle the shortfall in the supply of housing, estimated at 15,000 to 20,000 per year. It is believed these funds will provide the capacity to finance an extra 6,000 homes, with an annual average delivery of 2,000 new homes (assuming a three year horizon). This will reduce the annual shortfall in the supply of housing by approximately 10 to 13.3 per cent.

Up to an additional €750 million may also be raised by borrowing through the private financial markets. These funds could potentially fund the delivery of a further 6,000 homes. All new residential development finance provided by HBFI will be in addition to the National Asset Management Agency's (NAMA) current housing delivery programme.<sup>19</sup>

<sup>16</sup> Department of Finance Press Release (30 January 2018) "Ministers Donohoe & Murphy welcome progress on the establishment of Home Building Finance Ireland". Available at: <a href="https://www.finance.gov.ie/updates/ministers-donohoe-murphy-welcome-progress-on-the-establishment-of-home-building-finance-ireland/">https://www.finance.gov.ie/updates/ministers-donohoe-murphy-welcome-progress-on-the-establishment-of-home-building-finance-ireland/</a>
<sup>17</sup> Ibid.

<sup>&</sup>lt;sup>14</sup> The ISIF is managed and controlled by the NTMA.

<sup>&</sup>lt;sup>15</sup> Taken from the Bill's <u>Explanatory Memorandum</u>.

<sup>&</sup>lt;sup>18</sup> Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: <a href="http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf">http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf</a>
<sup>19</sup> National Asset Management Agency Press Statement (October 2015) "NAMA Residential Delivery Programme 2016-2020". Available at: <a href="https://www.nama.ie/about-us/news/news-detailed-view/news/nama-residential-delivery-programme-2016-2020/">https://www.nama.ie/about-us/news/news-detailed-view/news/nama-residential-delivery-programme-2016-2020/</a>

The Bill also seeks to grant necessary power to the NTMA to provide cost recoverable staff and services to HBFI and to grant the necessary powers to HBFI to enable it to accomplish its objectives.

The Minister for Finance, Paschal Donohoe, T.D., in response to written questions regarding the estimated number of NAMA staff that will be transferred to HBFI and the date on which the transfer will take place stated that it is aimed for HBFI to commence operations later in 2018.

The Minister stated that:

"HBFI will be designed to leverage off the extensive experience already available to the State to deliver this initiative and as such existing NAMA staff skills and expertise will be utilised to deliver this funding. It will be for the Board of HBFI, once constituted, to determine the exact staffing requirements of the fund with reference to its functions. It is envisaged that the HBFI Board, in consultation with the Board of the NTMA and with the approval of the Chief Executive and Board of NAMA, will determine the exact number of staff to be transferred from NAMA once HBFI is operational. It is expected that the assignment of staff to HBFI will commence shortly after the enactment of the legislation establishing HBFI."<sup>20</sup>

### **Principal themes**

In exploring the Bill, the subsequent sections of this Digest will discuss the following:

- Policy context and background;
- · Principal provisions; and
- Performance Indicators.

Pre-Legislative Scrutiny was waived for this Bill to enable the proposed legislation to proceed more quickly given the urgent need for more housing development.

<sup>&</sup>lt;sup>20</sup> Written Questions (29 May 2018) "Home Building Finance Ireland". Available at: https://www.oireachtas.ie/en/debates/question/2018-05-29/172/#pq\_172

## Policy context and background

The Bill proposes the establishment of HBFI in response to the current shortfall in the supply of housing in Ireland. The Bill aims to increase the level of debt funding to viable residential development projects in the State.

In 2017, the Department of Finance published an Information Note on Budget 2018<sup>21</sup> which included a "Housing Finance Proposal". The Information Note contained a proposal to establish a new dedicated fund, Home Building Finance Ireland ('HBFI'), to provide funding on market terms to viable residential development projects experiencing difficulty obtaining adequate funding.<sup>22</sup>

The low level of residential construction and the financing challenge for developers was the core rationale behind the Housing Finance Proposal to establish HBFI. Up to €750 million in funds may be provided from the Ireland Strategic Investment Fund ('ISIF)<sup>23</sup> to the HBFI for this purpose.<sup>24</sup> A further €750 million may be borrowed from the financial markets.

The announcement of a €750 million fund in Budget 2018 was welcomed by the Construction Industry Federation (CIF), with Tom Parlon, Director General of the CIF stating that:

"The CIF and RSM accountants recently identified a market failure in the availability of finance for construction companies... The Government's announcement of a €750 fund to be administered by the newly established Housebuilding Finance Ireland to drive housebuilding is to be welcomed.

As such, we welcome the establishment of this agency and the €750m ISIF fund as it may bridge the funding gap by providing funding at competitive levels where there is an established demand for housing but no lending from traditional sources available."25

An important aspect of the proposed HBFI is that it is designed to avoid distortion in the market and comply with State Aid rules.<sup>26</sup> Section 7(1) of the Bill states that lending will be on "commercial terms", implying that the interest rate and loan-to-cost ratio offered would be in line with that offered by private lenders. If so, the HBFI will not violate State Aid rules. However, the Bill does not specifically state the interest rate or loan-to-cost ratio to be offered by HBFI.

<sup>24</sup> Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: <a href="http://www.budget.gov.ie/Budgets/2018/Documents/Budget 2018 Information Note Housing Finance Proposal.pdf">http://www.budget.gov.ie/Budgets/2018/Documents/Budget 2018 Information Note Housing Finance Proposal.pdf</a>
<sup>25</sup> Construction Industry Federation (10 October 2017) "CIF welcomes increased investment at critical time for Irish economy". Available at: https://cif.ie/2017/10/10/budget-2018-cif-welcomes-increased-investment-infrastructure-criticaltime-irish-economy/

<sup>&</sup>lt;sup>21</sup> Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf

Department of Finance Press Release (30 January 2018) "Ministers Donohoe & Murphy welcome progress on the establishment of Home Building Finance Ireland". Available at: https://www.finance.gov.ie/updates/ministers-donohoemurphy-welcome-progress-on-the-establishment-of-home-building-finance-ireland/
The ISIF is managed and controlled by the NTMA.

RTE News (10 October 2017) "New house-building entity to boost construction" Quote from Minister Paschal Donohoe. Available at: https://www.rte.ie/news/budget-2018/2017/1010/911270-750m-from-isif-to-be-allocated-tohousing/

Another aspect of the proposed HBFI is that it will be established as a <u>Designated Activity</u> <u>Company</u> (DAC) limited by shares (Section 4 of the Bill). Up to €20 million in shares must be allocated to the Minister and paid for out of the ISIF. Companies are likely to be incorporated as a DAC if the purpose of the company is to complete a specific sole purpose. These are known as Special Purpose Vehicles (SPVs). A Special Purpose Vehicle (SPV) is a legal entity set up to fulfil a temporary objective.<sup>27</sup>

The benefit of an SPV is that they are an off balance sheet vehicle and therefore do not add to general government debt (which is subject to EU fiscal rules). If HBFI is structured on an off balance sheet basis then it offers additional scope for further investment.<sup>28</sup>

The next section of this Digest looks at housing demand and supply; construction and finance; and what the Bill proposes.

### Housing demand and supply

The latest Rebuilding Ireland Monthly Housing Activity Data (June 2018)<sup>29</sup> found that nationally, average residential property prices increased 12.7 per cent for the twelve month period up to the end of March 2018, as demand continues to outstrip supply. Price increases were more pronounced outside of Dublin, with an average increase in residential property prices of 13.4 per cent compared to a 12.1 per cent increase in Dublin.

### Estimated total housing completions needed

In December 2016, the ESRI published a report<sup>30</sup> as part of the ESRI Forecasting Series featuring a section on long-run housing demand. The report found that housing activity was low in 2015, with only 12,600 housing units being built. When structural demand for housing in the economy is reviewed it is found that approximately 23,000 housing units were required in 2015. The report concluded that under this scenario, the market should reach an equilibrium demand for approximately 27,000 housing units in 2018, and projections found that by 2024, demand is likely to reach a steady rate of approximately 30,000 housing units per year.<sup>31</sup>

<sup>&</sup>lt;sup>27</sup> PWC (December 2011) "The next chapter: Creating an understanding of Special Purpose Vehicles". Available at: <a href="https://www.pwc.com/gx/en/banking-capital-markets/publications/assets/pdf/next-chapter-creating-understanding-of-spvs.pdf">https://www.pwc.com/gx/en/banking-capital-markets/publications/assets/pdf/next-chapter-creating-understanding-of-spvs.pdf</a>

<sup>&</sup>lt;sup>28</sup> Arthur Cox Law Firm (November 2017) "Financing Irish Infrastructure: Responding to Ireland's Housing Crisis and review of Budget 2018 measures". Available at: <a href="http://www.arthurcox.com/wp-content/uploads/2017/11/Investing-in-Housing-in-Ireland-Nov-20171.pdf">http://www.arthurcox.com/wp-content/uploads/2017/11/Investing-in-Ireland-Nov-20171.pdf</a>

Rebuilding Ireland (05 June 2018) "Monthly Housing Activity Data June 2018". Available at:

http://rebuildingireland.ie/install/wp-content/uploads/2018/06/Monthly-Housing-Activity-Data-June-2018.pdf

30 Adde Bargin David Duffy Daniel Felov Abian Carrie Badriguez Morting Loudes Niell Melannay Edge.

Adele Bergin, David Duffy, Daniel Foley, Abian Garcia Rodriguez, Martina Lawless, Niall McInerney, Edgar Morgenroth and Kieran McQuinn (05 December 2016) "Ireland's Economic Outlook: Perspectives and Policy Challenges" ESRI Forecasting Series. Available at: <a href="https://www.esri.ie/publications/irelands-economic-outlook-perspectives-and-policy-challenges/">https://www.esri.ie/publications/irelands-economic-outlook-perspectives-and-policy-challenges/</a>
31 Ibid.

### **Shortfall in housing completions**

According to the new CSO measure of housing completions<sup>32</sup>, 14,446 new housing units were completed in 2017<sup>33</sup>. 3,526 new housing units were constructed in the first quarter of 2018, up 27 per cent from the same quarter in 2017. The Department of Finance's Information Note on Budget 2018 noted that the approximately 15,000 extra residential units are required per year.<sup>34</sup> However, the supply of new housing units increased substantially in 2017, from 9,915 in 2016 to 14,446 in 2017 (a 45.7 per cent increase). This will likely reduce the shortfall in housing supply.

Rebuilding Irelands January 2017 Housing Activity Report<sup>35</sup> acknowledged that the latest indicators of housing activity:

"...confirm that the upward trend in housing activity evident in recent times is gaining momentum and, having regard to wider economic growth projections and the increasing level of planning permissions in particular, should continue to gather pace and result in higher levels of output in 2017 and beyond."36

Figure 2, overleaf, provides a comparison of house prices with new house completions<sup>37</sup> between 1997 and 2016. Both price and new house completions increased substantially between 1997 and 2007 before falling during the economic crisis.

The average price of houses has since recovered and is rising back to its pre-crisis peak as house completions remain significantly below demand.

The graph overleaf is based on ESB data on new connections to the grid that was often used as a proxy for new housing completions. A criticism of this measure<sup>38</sup> has led to the creation of a new series produced on a quarterly basis dating back to 2011. 39 This series could not be used for the above graph as the data is required to date back pre 2011.

Table 3, overleaf, provides figures for ESB connections from 2011 to 2017 compared with the new dwelling completions data series created by the CSO.

33 CSO statistical publication (14 June 2018) "New Dwelling Completions Q1 2018". Available at: https://www.cso.ie/en/releasesandpublications/ep/p-ndc/newdwellingcompletionsq12018/

<sup>37</sup> ESB new connections data is used as a proxy for new house completions between 1997 and 2016 as the CSO new housing completions measure only dates back to 2011. See appendix 1. See appendix 1.

<sup>&</sup>lt;sup>32</sup> See Appendix 1.

Department of Finance (October 2017) "Information Note on Budget 2018 - Housing Finance Proposal". Available at: http://www.budget.gov.ie/Budgets/2018/Documents/Budget 2018 Information Note Housing Finance Proposal.pdf Rebuilding Ireland (10 February 2017) "January 2017 Housing Activity Report". Available at: http://rebuildingireland.ie/news/january-housing-activity-report/

<sup>36</sup> Ibid.

<sup>&</sup>lt;sup>39</sup> CSO statistical publication (14 June 2018) "New Dwelling Completions Q1 2018". Available at: https://www.cso.ie/en/releasesandpublications/ep/p-ndc/newdwellingcompletionsq12018/

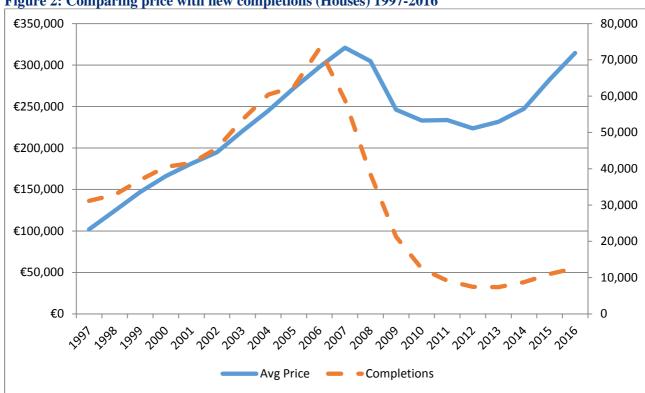


Figure 2: Comparing price with new completions (Houses) 1997-2016

Source: Department of Housing "House Price Statistics" and "ESB Connections".

Table 3: Housing completions – ESB connections v CSO measure

|                 | Total (ESB connections) | Total (New CSO<br>measure) | Difference |
|-----------------|-------------------------|----------------------------|------------|
| 2011            | 10,480                  | 6,994                      | -3,486     |
| 2012            | 8,488                   | 4,911                      | -3,577     |
| 2013            | 8,301                   | 4,575                      | -3,726     |
| 2014            | 11,016                  | 5,518                      | -5,498     |
| 2015            | 12,666                  | 7,219                      | -5,447     |
| 2016            | 14,932                  | 9,915                      | -5,017     |
| 2017            | 19,271                  | 14,446                     | -4,825     |
| 2018 (First 2   |                         |                            |            |
| months/quarter) | 3,158                   | 3,526                      | -          |

### **Construction and finance**

A survey by RSM and the Construction Industry Federation (CIF) indicated that construction companies have faced difficulties accessing finance for infrastructure projects. Out of 303 construction companies surveyed in Q2 2017, 63 per cent reporting difficulty in securing finance from financial institutions in the past year (RSM and CIF 2017). The survey report noted that the majority of construction companies funded investment in construction projects through cash reserves in the past twelve months.<sup>40</sup>

Mr Paddy O'Connell, the Construction Director with RSM, stated that:<sup>41</sup>

"The survey shows that most companies are having to rely on cash reserves to fund business on an ongoing basis. This is generally not considered a sustainable model for a growth industry. This overreliance on reserves, combined with the lack of alternative funding sources and difficulty securing finance within the banking system highlights an industry that is yet to fully emerge from the recession...

Our access to finance report shows that fully 70% of respondents expected difficulty in securing finance over the coming three years. This doesn't augur well in the face of increased demand for construction outlined in the Government's Rebuilding Ireland strategy and its public capital programme,"

Mr Tom Parlon, Director General of the CIF stated that:

"This report should ring warning bells for Government because it clearly shows that construction SMEs across all sub-sectors in the industry are still reporting difficulties in securing funding for viable projects. The implications for Irish society are worrying as these companies need to be supported to be in a position to address Ireland's housing and infrastructure crises... The private sector hasn't failed, where it can access finance it is delivering, but there is a market failure in the availability of finance for viable construction projects."

Difficulties in accessing finance may be one cause of the low level of residential housing construction. Related to this, Ireland has a relatively high level of construction costs compared with other European countries.<sup>42</sup> If construction costs are too high, then an inability to access an adequate amount of finance may also be an explanation for the low level of housing construction in Ireland.

<sup>&</sup>lt;sup>40</sup> RSM and CIF (2017) "Construction Sector Access to Finance". Available at: <a href="https://cif.ie/wp-content/uploads/2017/10/RSM-CIF-Access-to-Finance.pdf">https://cif.ie/wp-content/uploads/2017/10/RSM-CIF-Access-to-Finance.pdf</a>

<sup>41</sup> Construction Industry for Josephian (2017) "It is a few for the property of the property of

<sup>&</sup>lt;sup>41</sup> Construction Industry federation (2017) "New survey by RSM & CIF shows construction companies reporting difficulty accessing funding SMEs & those outside of Dublin worst affected". Available at: <a href="https://cif.ie/2017/10/09/construction-companies-reporting-difficulty-accessing-funding/">https://cif.ie/2017/10/09/construction-companies-reporting-difficulty-accessing-funding/</a>

<sup>&</sup>lt;sup>42</sup> AIB Housing Supply Report (2018) "Housing Supply in Ireland – Highlighted issues and suggestions". Available at: <a href="https://aib.ie/content/dam/aib/corporate/docs/real-estate-finance/aib-housing-supply-report-2017.pdf">https://aib.ie/content/dam/aib/corporate/docs/real-estate-finance/aib-housing-supply-report-2017.pdf</a>

In May 2016, the Society of Chartered Surveyors Ireland (SCSI) released a report<sup>43</sup> which evaluated the viability and affordability of new housing developments to assess the real cost of new housing delivery in the private sector. The study analysed construction and delivery cost data and found that the overall cost to build a new home (including completing roads and drains etc.) is €150,251. However, once costs other than construction costs are factored in (professional fees, VAT, land and acquisition, margin, etc.), the cost to deliver a three bed semi-detached home in Dublin increases to €330.493.

A later report published by the SCSI on the real costs of apartment delivery (October 2017)<sup>44</sup> reported similar findings.

There are other options available for residential property developers to obtain finance. Residential property development funds provided by Bank of Ireland (BOI) and Allied Irish bank (AIB) are examined as they have ring fenced funds for financing residential property development.

In 2017, BOI put a fund in place that can provide up to €1 billion for property development lending. 45 The BOI Responsible Business Report stated that a €1 billion fund was put in place to "support the delivery of 3,300 housing units and over 1,250 student beds to help provide muchneeded accommodation in Ireland". This compares to 6,000 potential new homes which HBFI have the capacity to fund with €750 million.<sup>46</sup>

In February 2013, AIB launched a €350 million New Homes Development Fund to support the construction of new homes in Ireland.<sup>47</sup> AIB is currently funding the development of over 3,000 private residential units. 48 In February 2017, AIB announced the launch of a €100 million Social Housing Development Fund. 49 The fund allows AIB to review the initial €100 million amount should demand warrant further funding.

There are also a number of options available for finance outside of the traditional banking sector such as Activate Capital, a recent joint venture between the US private equity firm KKR with the

<sup>&</sup>lt;sup>43</sup> Society of Chartered Surveyors Ireland (May 2016) "The Real Cost of New House Delivery – Analysis of Real Market Data to Evaluate Viability & Affordability of New Housing Development". Available at: https://www.scsi.ie/documents/get\_lob?id=885&field=file

Society of Chartered Surveyors Ireland (24 October 2017) "The Real Costs of New Apartment Delivery - Analysis of Affordability and Viability". Available at: <a href="https://www.scsi.ie/documents/get\_lob?id=1338&field=file">https://www.scsi.ie/documents/get\_lob?id=1338&field=file</a>
45 Bank of Ireland (April 2018) "Responsible Business Report 2017". Available at:

https://www.bankofireland.com/app/uploads/assets/boi-responsibility-report-2017.pdf

<sup>&</sup>lt;sup>46</sup> Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018 Information Note Housing Finance Proposal.pdf AIB Press Release (13 February 2014) "AIB launches a EUR350 million New Homes Development Fund". Available at: https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2014/13-02-2014-aib-launches-eur350-million-

new-homes-development-fund.pdf

48 AIB Housing Supply Report (2018) "Housing Supply in Ireland – Highlighted issues and suggestions". Available at: https://aib.ie/content/dam/aib/corporate/docs/real-estate-finance/aib-housing-supply-report-2017.pdf

AlB Press Release (01 February 2017) "AlB Announces €100m Social Housing Development Fund". Available at: https://group.aib.ie/content/dam/aib/group/Docs/Press%20Releases/2018/aib-announces-100m-euro-social-housingdevelopment-fund.pdf

ISIF. Activate Capital can provide up to €500 million, on a commercial basis, for residential property development.<sup>50</sup>

The following funds that are currently available for development finance include:

- BOI Property Development Fund: Up to €1 billion to support the delivery of 3,300 housing units and over 1,250 student beds;
- AIB New Homes Development Fund: Up to €350 million fund established in 2013 with over 3,000 private residential units currently being funded;
- AIB Social Housing Development Fund: Up to €100 million to fund social housing units;
- Activate Capital: Joint Venture between the ISIF and a US equity firm KKR to provide €500 million in development finance with an estimated capacity to fund 11,000 new homes.
   However, to date only 3,600 new homes have been funded;<sup>51</sup> and
- For comparative purposes; HBFI will be able to provide up to €750 million in debt finance for the development of 6,000 new homes, and can potentially borrow up to a further €750 million for the development of more homes.

The following interest rates and loan-to-cost ratios apply for each source of finance:

- BOI Property Development Fund: Interest rate of approximately 7 per cent; loan-to-cost ratio of 60 to 65 per cent;
- AIB New Homes Development Fund: Interest rate of approximately 7 per cent; loan-to-cost ratio of 60 to 65 per cent;
- AIB Social Housing Development Fund: Interest rate of approximately 7 per cent; loan-tocost ratio of 70 per cent; and
- Activate Capital: Interest rate of approximately 10 per cent; loan-to-cost ratio of 90 per cent.<sup>52</sup>

### What does the Bill propose?

The Bill proposes the establishment of a company called Home Building Finance Ireland (HBFI) to make available debt funding to qualifying developers building commercially viable residential development in the State.

Up to €750 million in funds may be provided by the NTMA to HBFI through the Ireland Strategic Investment Fund (ISIF). Up to €730 million may be loaned to HBFI or any HBFI group entity out of

%E2%82%AC500M-Home-Building

<sup>51</sup> Activate Capital Home Webpage. Available at: <a href="http://www.activatecapital.ie/">http://www.activatecapital.ie/</a>

<sup>&</sup>lt;sup>50</sup> Business Wire (28 July 2015) "Ireland Strategic Investment Fund Announces €500M Home-Building Finance Joint Venture with Leading Global Investment Firm KKR". Available at: https://www.businesswire.com/news/home/20150728005842/en/Ireland-Strategic-Investment-Fund-Announces-

<sup>&</sup>lt;sup>52</sup> Business Wire (28 July 2015) "Ireland Strategic Investment Fund Announces €500M Home-Building Finance Joint Venture with Leading Global Investment Firm KKR". Available at:

 $<sup>\</sup>frac{https://www.businesswire.com/news/home/20150728005842/en/Ireland-Strategic-Investment-Fund-Announces-\\ \frac{\%E2\%82\%AC500M-Home-Building}{}$ 

the Fund, on commercial terms as directed by the Minister. €20 million in share capital of HBFI must be allocated to the Minister for Finance. An additional sum of money may also be borrowed through the private financial markets, to a maximum of €750 million.

The money raised by HBFI, through the NTMA or through the financial markets will then be used for the purpose of funding residential development in the State. Lending must be on 'commercial terms', taking account of all risk factors to ensure loans are only granted to viable residential development projects.

Lending on 'commercial terms' implies that loans will be granted on a similar basis to those offered by banks and other financial institutions. Minister for Finance Paschal Donohoe stated that developers would have the same obligations applied to commercial deals. The Minister stated that the rates will not be lower than that of existing bank rates to ensure that the scheme does not merely offer cheaper loans to developers.<sup>53</sup> However, the Bill also does not clearly state the interest rate to be charged, or the loan-to-cost rate available to developers from HBFI.

It is hoped the €750 million in funds provided by the NTMA will provide the capacity to finance an extra 6,000 homes, with an annual average delivery of 2,000 new homes (assuming a three year horizon).<sup>54</sup> The current estimated annual shortfall in residential supply is 15,000 to 20,000 housing units,<sup>55</sup> so if HBFI achieve its objectives and fund an additional 2,000 housing units per year, this would reduce the annual shortfall by approximately 10 per cent.

<sup>&</sup>lt;sup>53</sup> Irish Examiner (31 January 2018) €750m Nama-run fund aims to build 6,000 homes". Available at: https://www.irishexaminer.com/ireland/750m-nama-run-fund-aims-to-build-6000-houses-466500.html

Department of Finance (October 2017) "Information Note on Budget 2018 – Housing Finance Proposal". Available at: <a href="http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf">http://www.budget.gov.ie/Budgets/2018/Documents/Budget\_2018\_Information\_Note\_Housing\_Finance\_Proposal.pdf</a>
To bid.

## **Principal provisions**

The *Home Building Finance Ireland Bill 2018* consists of 25 sections divided over six parts. This section of the Digest will focus on the following core themes identified in the Bill:

- Formation of HBFI;
- Functions of HBFI;
- Share capital;
- Borrowings of HBFI;
- Financial reporting;
- · Accountability and performance reviews; and
- Offences and penalties.

This Digest does not look at certain provisions on Consequential Amendments (Part 5) or the Miscellaneous Provisions (Part 6), however, a brief description of all sections in the Bill is set out in Table 2 in the Summary section at the start of this Digest.

## Formation of Home Building Finance Ireland (Part 2: sections 4-6 and sections 8-9)

Section 4 of the Bill provides the statutory basis for the establishment of HBFI as a Designated Activity Company (DAC) limited by shares, to be formed and registered under Part 16<sup>56</sup> of the *Companies Act*, 2014.

### **Designated Activity Company (DAC)**

Companies are generally incorporated as DACs when their owners intend to limit their functions to defined commercial purposes, such as when a parent company forms a subsidiary to deal with a particular aspect of its business. Companies formed as DACs are commonly used as special-purpose vehicles (SPVs), a commercial term that describes their use for a single project or commercial operation. While a DAC can be used as an SPV, not all SPVs are DACs.

Section 4(3) states that HBFI "shall be independent in the performance of its functions". However, it is worth noting that section 22 of the Bill provides the Minister with the power to give directions to HBFI, directions with which the HBFI must comply.<sup>57</sup> Any direction given must be laid before the Houses of the Oireachtas.

<sup>&</sup>lt;sup>56</sup> Part 16 of the 2014 Act sets out the provisions governing Designated Activity Companies. See <a href="http://revisedacts.lawreform.ie/eli/2014/act/38/section/963/revised/en/html">http://revisedacts.lawreform.ie/eli/2014/act/38/section/963/revised/en/html</a>
<sup>57</sup> Ministerial diseases a revisable result of the companies of

<sup>&</sup>lt;sup>57</sup> Ministerial directions must be in writing and must be consistent with the functions of the HBFI. Any direction given must be published in *Iris Oifigiúil* and laid before the Houses of the Oireachtas.

The Bill also provides the Minister with the power to appoint members to the board of HBFI<sup>58</sup>, and to approve the constitution of HBFI (including any alteration thereto).

### **Group entities of HBFI**

Section 6 of the Bill provides the legal basis for HBFI to form, acquire shares in, or promote a HBFI group entity. A HBFI group entity is defined in the Bill as:

- · A subsidiary of HBFI; or
- Any other body corporate and any trust, partnership, arrangement for sharing of profits and losses, joint venture, association, syndicate or other arrangement.

Neither HBFI nor a HBFI group entity can guarantee any borrowings or liabilities of their subsidiaries without the prior consent of the Minister.

### Functions of HBFI (Part 2: section 7 and 9)

Section 7 of the Bill provides that HBFI may lend money on 'commercial terms' for the purpose of funding residential development in the State. It is worth noting that the Bill does not define what is meant by commercial terms. In lending money HBFI must take into account all of the risk factors relevant to lending.

The aim of HBFI lending will be:

- to contribute to the economic and social development of the State; and
- to enhance the competiveness of the economy.

In order to enable HBFI to perform its functions section 9 of the Bill provides that the NTMA must supply (where practicable) HBFI and any HBFI group entity with the services, systems and staff required. Where these services, systems and staff have already been provided by the NTMA to NAMA<sup>59</sup>, then subject to approval they may be redirected to HBFI or a HBFI group entity. Approval may be withheld in circumstances where it is likely to materially affect NAMA's ability to achieve its purpose as set out in the *National Asset Management Agency Act 2009*.

It is worth noting that NAMA will complete the majority of its work by 2020<sup>60</sup> and most of NAMA's deleveraging work is expected to be complete by the end of 2018.<sup>61</sup> Therefore it should not be an issue for NAMA to provide staff to HBFI.

<sup>&</sup>lt;sup>58</sup> The board of HBFI must consist of at least three and no more than seven directors. The Bill does not set down any qualification criteria or considerations which the Minister must take into account in deciding on such appointments. However, section 8 does provide that an appointment must be subject to the terms and conditions set out in the constitution of HBFI. Provisions relating to the constitution of HBFI are contained in section 5 of the Bill.

<sup>59</sup> In line with section 41 and section 42 of the National Asset Management Agency Act 2009

<sup>&</sup>lt;sup>60</sup> Written questions – Dáil Éireann Debate (24 May 2018) "NAMA Operations". Available at: https://www.oireachtas.ie/en/debates/question/2018-05-24/52/#pg 52

HBFI or a HBFI group entity must reimburse any costs incurred by the NTMA in respect of the provision of services, systems and staff. However, where the NTMA is not in a position to supply such services, systems and staff, they can be procured.

Section 9(9) provides for the making of declarations of interest by members of staff of the NTMA being assigned to HBFI or a HBFI group entity.

### Share capital of HBFI (Part 3: sections 10-12)

Section 10 of the Bill provides that upon incorporation, HBFI must issue shares to the Minister with a total nominal value of €20 million.

Section 11 provides that the Minister may hold, sell, transfer, exchange or dispose of any or all of his or her shares. However any sale, transfer, exchange or disposal is restricted to or with:

- (1) The NTMA;
- (2) The Minister for Housing, Planning and Local Government; or
- (3) A body under the aegis of the Minister Housing, Planning and Local Government.

Any proceeds must be paid into or disposed of for the benefit of the Exchequer.

Section 12 provides that HBFI may pay such dividends to the Minister in respect of shares held by him or her, to be paid into, or disposed of for the benefit of the Exchequer.<sup>62</sup>

### **Borrowings of HBFI (Part 3: section 13 and Part 5: section 19)**

Section 19 of the Bill proposes amending the <u>National Treasury Management Agency</u>
(<u>Amendment</u>) <u>Act</u>, <u>2014</u> to provide a legislative basis for the Minister to direct the NTMA to lend monies to HBFI or any HBFI group entity from the Ireland Strategic Investment Fund (ISIF) on such commercial terms and conditions as the Minister may direct. The Minister may also direct the NTMA to pay out of the Fund any monies due to HBFI in respect of the allocation of shares to the Minister under section 10 of the Bill (i.e. €20m). **Total funds provided by the NTMA to HBFI and HBFI group entities cannot exceed €750 million**.

However, section 13 of the Bill provides that HBFI and HBFI group entities **may borrow additional monies**, in any currency, the total liability of which at any one time **cannot exceed €750 million**. Borrowing can occur through the creation and issuance of bonds, debentures, and other securities; bearing such interest rate and subject to such repayment conditions as HBFI or a HBFI group entity thinks fit. HBFI will be responsible for any liabilities incurred by it from such borrowing.

<sup>61</sup> Department of Finance. "National asset Management Agency". Available at: <a href="https://www.finance.gov.ie/what-we-do/shareholding-financial-advisory/national-asset-management-agency/">https://www.finance.gov.ie/what-we-do/shareholding-financial-advisory/national-asset-management-agency/</a>

<sup>&</sup>lt;sup>62</sup> The payment of any dividend is decided by the Board in consultation with the Minister.

<sup>&</sup>lt;sup>63</sup> Interest on the borrowings, liabilities, and obligations of HBFI or any group entity are not to be taken into account in calculating this total amount.

Together sections 19 and 13 mean that the total potential monies available to HBFI and HBFI group entities will be €1.5bn.

### Financial reporting/auditing (Part 4: sections 15-17 and Part 5: section 23)

Section 15 of the Bill provides that the provisions of Part 6 of the Companies Act 2014, which govern Financial Statements, Annual Returns and Audit apply to HBFI and HBFI group entities. As a result HBFI and HBFI group entities must submit statutory financial statements to the Comptroller and Auditor General, no later than two months after the end of each financial year, for audit and the preparation of a report. A copy of the statutory financial statements and the report prepared by the Comptroller and Auditor General must be laid before each House of the Oireachtas.

Section 15 specifically excludes certain provisions in the 2014 Act from applying to the Comptroller and Auditor General in the performance of his or her functions in relation to HBFI or any HBFI group entity. These provisions relate to the appointment, removal and resignation of statutory auditors, and notification obligations.

Section 16 provides for the appointment of a statutory auditor or statutory audit firm to HBFI or a HBFI group entity, following prior consultation with the Minister. Any appointment will not affect the obligation to submit accounts to the Comptroller and Auditor General under section 15.

## Accountability and performance reviews (Part 4: section 17 and Part 6: section 23)

Section 17 of the Bill provides for a member of the board or a senior officer of HBFI appointed to give evidence to the Public Accounts Committee, when required.

Section 23 provides that the Minister may at any time require HBFI to report to him or her on the performance of its functions (as set out in section 7 of the Bill). It further provides that the Minister must, as soon as possible after 31 December 2020 and every 2 years thereafter, prepare a report assessing the following:

- a) the extent to which HBFI has performed its functions and met its objectives;
- b) the ongoing impact of HBFI on the amount of money available for residential development in the State; and

<sup>&</sup>lt;sup>64</sup> The financial statements must be prepared in accordance with <u>Part 6</u> (Financial Statements, Annual Return and Audit) of the *Companies Act 2014* and the report of the Comptroller and Auditor General must be in the form set out in <u>section</u> <u>336</u> of the 2014 Act.

c) the amount of money available from other sources for residential development purposes.

The Minister's report must set out his or her decision as to whether HBFI should continue to operate. In preparing his or her report the Minister must seek the views of HBFI on matters outlined at a), b) and c) above, but only has to engage in a public consultation in relation to the matters outlined at c).

The Minister's report must be laid before the Houses of the Oireachtas.

### Offences and penalties (Part 6: sections 21 and 24)

#### Disclosure of confidential information

Section 21 provides that the unauthorised disclosure of confidential information<sup>65</sup> by a board member, an officer of HBFI or a HBFI group entity, an advisor or employee of an advisor to HBFI or a HBFI group entity; with specified exceptions<sup>66</sup>, is an offence.

A person who commits such an offence is liable:

- On summary conviction, to a fine up to €5,000 and/or a term of imprisonment up to six months; or
- On conviction on indictment, to a fine and/or a term of imprisonment up to two years.

#### **Communications with HBFI**

Under section 24 of the Bill, it will be an offence to communicate, **on behalf of another person**, with HBFI, a HBFI group entity or a person providing services or advice to HBFI or a HBFI group entity **with the intention of influencing the making of a decision** related to the performance of a HBFI or a HBFI group entity functions.

A decision relating to the performance of a HBFI or a HBFI group entity function includes a decision relating to:

- The lending of money; and
- Any matter that could give rise to an advantage or benefit to a person (other than HBFI).

<sup>&</sup>lt;sup>65</sup> Confidential information is defined in the Bill as including proposals of a commercial nature, loan applications or tenders submitted to HBFI or a HBFI group entity.

<sup>&</sup>lt;sup>66</sup> The exceptions specified in section 21 include: where the disclosure is made to the Minister, is made in the performance of the functions of HBFI, is a protected disclosure, or is required by law.

A person who commits an offence under section 24 is liable on summary conviction to a fine up to €1,000 and/or a term of imprisonment up to 6 months. The person on whose behalf the communication was made does not commit an offence.

The Bill provides for a number of exceptions to the offence:

- (a) where the person making the communication does so:
  - as an adviser to the person on whose behalf the communication is made;
  - as an employee of the person on whose behalf the communication is made; or
  - as a shareholder or person exercising control over the entity on whose behalf the communication is made.
- (b) the communication is made without an intention to benefit or confer advantage on any specific person; or
- (c) details of the communication (for example the name and address of the person on whose behalf it is made) are published in a daily national newspaper.

Section 24 also places an onus on a person who believes they have received an "unauthorised" communication to notify a member of An Garda Síochána as soon as practicable. Failure to do so is an offence to which the penalties set out above apply.

### **Performance indicators**

Table 4 below sets out potential performance information that may assist members to measure and monitor the progress of the Home Building Finance Ireland Bill if and when enacted.

These potential indicators are presented for illustrative purposes only.

Table 4: Objective - Providing debt funding for residential development in the State

| Table 4: Objective - Providing debt funding for residential development in the State |   |  |  |
|--|---|--|--|
|  | Home Building Finance Ireland Bill 2018   |  |  |
| Objective  | <ul> <li>Make available debt funding on a commercial basis for the purposes of<br/>funding commercially viable residential development in the State; and</li> <li>To contribute to the economic and social development of the State.</li> </ul>   |  |  |
| Benchmark  | <ul> <li>Number of loans provided to developers;</li> <li>The value of debt finance made available to property developers for the purpose of financing residential properties; and</li> <li>Number of new residential completions pre-HBFI.</li> </ul>  |  |  |
| Resources  | <ul> <li>Staff numbers (authorised officers);</li> <li>Remuneration of staff;</li> <li>Time required to establish HBFI; and</li> <li>Costs associated with setting up a new company.</li> </ul>   |  |  |
| Activity   | <ul> <li>Allocation of up to €750m in debt funding provided by the NTMA to HBFI;</li> <li>Setting up procedures for allocating staff, systems and services from the NTMA to HBFI;</li> <li>Setting up procedures for borrowing up to an extra €750 million in funds from private financial markets; and</li> <li>Establishing procedures for providing debt funding to residential property developers in the State.</li> </ul> |  |  |
| Short-term outcome   | <ul> <li>Increase in funding made available to developers for the purpose of<br/>funding residential development projects in the State.</li> </ul>  |  |  |
| Long-term outcome  | <ul> <li>Increased uptake in debt financing by residential property developers;</li> <li>and</li> <li>Increase in the supply of residential properties.</li> </ul>  |  |  |

## **Appendix 1: New CSO measure for new housing completions**

The ESB new connections data has until recently been used as a proxy for new housing completions by the Department of Housing, Planning and Local Government. The logic was that ESB connections to the grid could be used as a proxy for new housing completions as developers will not bring a house to the market until there is an electricity connection. However, previously developed properties during the boom that have just recently been connected to the grid are thought to have exaggerated the true level of housing completions.<sup>67</sup>

Criticisms of this measure has led to the creation of a new data series. This new series is produced on a quarterly basis and dates back to 2011. The data utilises the ESB electricity connection data, adjusted based on Revenue data, Building Energy Ratings (BER), Census of Population, and the GeoDirectory property database. The new dwelling completions measure developed by the Central Statistics Office (CSO) shows a total of 14,446 new housing units constructed in 2017, nearly 5,000 less than the 19,271 figure provided by ESB new connections data.

Table 5 below presents the number of housing completions between 2011 and 2017 (including the first two months of 2018) using ESB connections as a proxy; and total new completions from 2011 to 2017 (first quarter of 2018) using the new CSO measure.

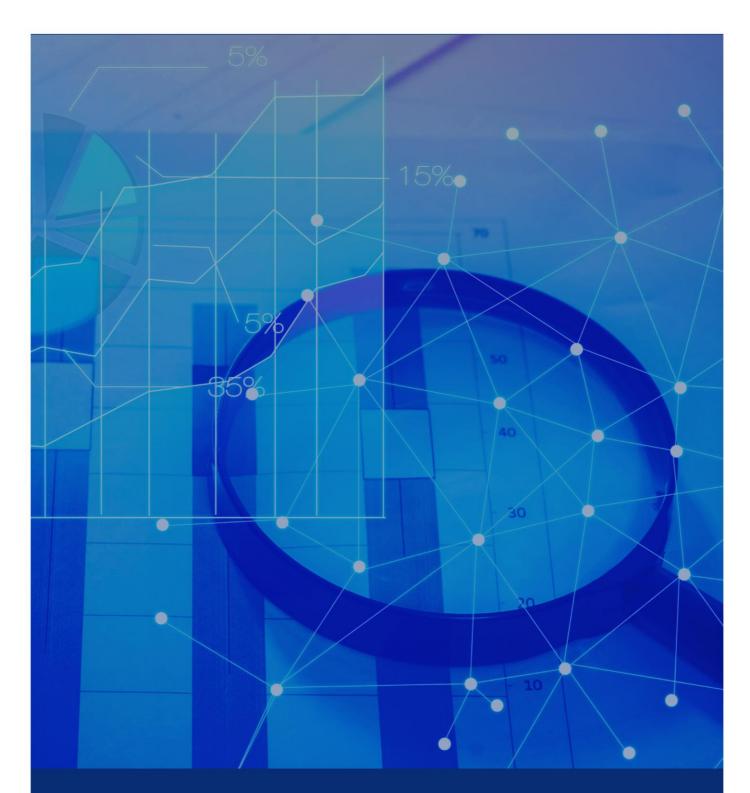
**Table 5: Housing completions – ESB v CSO measure** 

|                 | Apartments | Houses | Total (ESB connections) | Total (New CSO<br>measure) |
|-----------------|------------|--------|-------------------------|----------------------------|
| 2011            | 1,340      | 9,140  | 10,480                  | 6,994                      |
| 2012            | 993        | 7,495  | 8,488                   | 4,911                      |
| 2013            | 922        | 7,379  | 8,301                   | 4,575                      |
| 2014            | 2,250      | 8,766  | 11,016                  | 5,518                      |
| 2015            | 1,641      | 11,025 | 12,666                  | 7,219                      |
| 2016            | 2,307      | 12,625 | 14,932                  | 9,915                      |
| 2017            | 2,959      | 16,312 | 19,271                  | 14,446                     |
| 2018 (First 2   |            |        |                         |                            |
| months/quarter) | 433        | 2,725  | 3,158                   | 3,526                      |

Source: Department of Housing "ESB Connections" Available <a href="here">here</a> and CSO "New Dwelling Completions" Available <a href="here">here</a>.

<sup>67</sup> The Irish Times (14 June 2018) "New homes overstated by nearly 60% CSO figures show". Available at: https://www.irishtimes.com/business/economy/less-than-15-000-homes-built-in-republic-last-year-cso-1.3530388 CSO statistical publication (14 June 2018) "New Dwelling Completions Q1 2018". Available at:

https://www.cso.ie/en/releasesandpublications/ep/p-ndc/newdwellingcompletionsq12018/



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