



**Bille an Bhainc Ceannais (Creat Cuntasachta Aonair),
2022**
**Central Bank (Individual Accountability Framework)
Bill 2022**

Meabhrán Míniúcháin
Explanatory Memorandum



**BILLE AN BHAINC CEANNAIS (CREAT CUNTASACHTA
AONAIR), 2022
CENTRAL BANK (INDIVIDUAL ACCOUNTABILITY
FRAMEWORK) BILL 2022**

EXPLANATORY MEMORANDUM

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

Purposes of the Bill

The principal purpose of the Bill is to confer powers on the Central Bank of Ireland to strengthen and enhance individual accountability in the financial services industry. This is to be achieved by prescribing responsibilities and providing for the allocation of responsibility and accountability for the management and operation of regulated financial service providers (RFSPs) to individuals, while maintaining a balance with the responsibilities that properly belong to the firms themselves.

The Bill will provide for obligations on RFSPs with respect to governance, management arrangements and senior executive accountability; by providing for conduct standards setting out standards of behaviour for RFSPs and individuals performing functions in relation to them; and by providing for the sanctioning of individuals who breach their responsibilities under financial services legislation.

To facilitate the holding of individuals accountable for their actions, the Bill will break the existing “participation link” which requires wrongdoing by a firm to be demonstrated before enforcement action can be taken against those persons involved in the management of the firm who participated in that wrongdoing. A new “duty of responsibility” will oblige senior executives to take reasonable steps to ensure that the firm does not breach its obligations under financial services legislation.

The Bill will introduce conduct standards for businesses and for persons performing controlled function roles.

The Bill also amends certain of the Central Bank’s processes in order to make them more efficient and effective and to ensure that they conform to the required standards of fairness in the administration of justice, in light of the decision of the Supreme Court in the case of *Zalewski v. An Adjudication Officer and Others* (2021). The processes to be amended include the Fitness and Probity regime, which will also be extended to financial holding companies, and the Administrative Sanctions Procedure.

The Bill is drafted so as to achieve its objectives by means of amendment of existing Central Bank legislation, and there is, therefore, a good deal of restatement and reordering of this existing legislation.

PART 1

PRELIMINARY

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

Section 2 — Definitions provides for the defining of terms used within the Bill.

PART 2

INDIVIDUAL ACCOUNTABILITY AND STANDARDS

Chapter 1 – Responsibility of Persons Performing Pre-Approval Controlled Functions – Sections 3 and 4

Section 3 — Amendment of section 48 of Act of 2013 provides for a new regulation-making power for the Central Bank to provide for arrangements that RFSPs shall adopt in relation to the allocation of responsibilities and compliance with obligations under financial services legislation.

Section 4 — Amendment of section 51 of Act of 2013 provides that regulations made under section 48 of the 2013 Act may apply to a specified class or classes of pre-approval controlled functions and may include different provisions in relation to different classes of pre-approval controlled functions.

Chapter 1 provides a new regulation-making power for the Central Bank to give effect to the Senior Executive Accountability Regime (SEAR). The SEAR will ensure greater transparency and clearer accountability within the financial services sector by giving the Central Bank powers to impose obligations on RFSPs to set out clearly where responsibility and decision-making lies within the RFSP including by making provision for the following:

- responsibilities that are inherent to each senior executive role;
- prescribing further responsibilities which the Central Bank considers that RFSPs must ensure are allocated to individuals in senior roles;
- the identification and allocation of other responsibilities by RFSPs to relevant senior executives;
- imposing requirements on RFSPs to prepare statements of responsibilities for each of their senior executives which clearly set out their role and areas of responsibility;
- imposing requirements on RFSPs to produce a management responsibility map documenting key management and governance arrangements in a comprehensive and accessible way within a single source of reference.

The population of senior executives who will be subject to the SEAR is aligned, for each in-scope firm, to the list of pre-approval controlled functions (PCFs) prescribed by regulations made under section 22 of the Central Bank Reform Act 2010.

The individual responsibilities of each senior executive (*i.e.* his or her inherent responsibilities, as well as any prescribed and/or other responsibilities allocated to the individual) must be documented in a statement of responsibilities. These statements are individual to each senior executive and are intended to promote clarity, transparency and accountability for individual responsibilities within the RFSP. The

additional clarity provided in the statement of responsibilities will also enhance the Central Bank's ability to hold individuals to account for regulatory breaches in the area for which they are responsible.

Each in-scope RFSP will be required to produce a management responsibility map. The purpose of the management responsibility map is to describe the management, governance and reporting arrangements of the RFSP in a clear single source of reference to include governance arrangements for the board, board committees and other decision-making committees or groups, reporting lines of senior executives, including within the wider RFSP group, and, if relevant, the interaction between the RFSP's and the RFSP group's governance and management arrangements.

Chapter 2 — Power of Bank to Prescribe Business Standards – Section 5

This Chapter provides for the introduction of business standards that will apply to RFSPs. The business standards will create a single reference point setting out in clear and simple terms the conduct standards that all RFSPs, regardless of sector, must meet. They will also provide an essential counterbalance to conduct standards imposed on individuals under the Common Conduct Standards and the Additional Conduct Standards.

The business standards will be further elaborated on through Central Bank regulations which will specify additional detail with respect to the operation of these standards.

A breach of the business standards will be a prescribed contravention so that the Central Bank can take direct enforcement action against, and may impose sanctions on, an RFSP responsible for such a breach.

Section 5 — amends the Act of 2010 by inserting Part 2A into the Act after Part 2.

PART 2A

POWERS OF BANK IN RELATION TO FINANCIAL SERVICE PROVIDERS

Business standards

Section 17A of the Act of 2010 provides for a new regulation-making power for the Central Bank to prescribe business standards with which RFSPs shall comply to ensure that they act in the interests of customers and of the integrity of the market; act honestly, fairly and professionally; and act with due skill, care and diligence.

Chapter 3 — Duty of Responsibility and Standards for Individuals — Section 6

This Chapter provides that a senior executive subject to SEAR commits a prescribed contravention if he or she fails to take reasonable steps to avoid a contravention by the RFSP occurring (or continuing) in the areas of the firm's business for which he or she is individually responsible. This duty of responsibility will underpin the responsibilities identified and allocated under SEAR by imposing a legal obligation on senior individuals in relation to their discharge.

Where a firm is in breach of its obligations and the Central Bank is considering whether the relevant individual discharged his or her duty as required, the Central Bank will be required to consider all relevant circumstances.

This Chapter also provides two sets of conduct standards for individuals.

Common conduct standards will apply to all persons performing controlled functions in relation to RFSPs. Such persons will be required to take reasonable steps to—

- (a) act honestly and with integrity;
- (b) act with due skill, care and diligence, including acting appropriately in any decision-making, including collective decision-making, ensuring decisions are properly informed;
- (c) be cooperative with the Central Bank and other regulators or authorities and deal with them in good faith and without delay;
- (d) act in the best interests of customers and treat them fairly and professionally; and
- (e) observe proper standards of market conduct.

Additional conduct standards will apply (in addition to the common conduct standards) to more senior persons, those performing pre-approval controlled functions in relation to all RFSPs and others who perform any other function by which the person may exercise a significant influence on the conduct of the RFSP's affairs. Persons in such senior roles will be required to take reasonable steps to—

- (a) ensure that the business of the RFSP for which the person is responsible is controlled effectively;
- (b) ensure that the business of the RFSP for which the person is responsible complies with relevant regulatory requirements;
- (c) ensure that any delegation of tasks for which they are responsible is to an appropriate person and that they oversee the discharge of the delegated task effectively;
- (d) disclose promptly and appropriately to the Central Bank any information of which the Central Bank would reasonably expect notice.

The introduction of conduct standards for all controlled function staff in all RFSPs will provide clarity as to the standards of behaviour the Central Bank expects of individuals working in the financial services industry.

To ensure that each individual is aware of and understands the expectations of them, the Bill provides that RFSPs shall—

- (a) notify all relevant persons of the conduct standards that apply to them;
- (b) provide suitable training to staff on the conduct standards; and
- (c) report in a timely manner any disciplinary action arising from breaches of the conduct standards to the Bank.

RFSPs will also be required to establish and maintain policies setting out how they will embed the common conduct standards throughout their respective organisations.

The Bill further provides that the Central Bank shall prepare and publish guidelines for providing practical guidance for persons who are to be subject to the conduct standards.

Section 6 amends the Act of 2010 by inserting Part 3A into the Act of 2010 after Part 3.

PART 3A

DUTY OF RESPONSIBILITY AND CONDUCT STANDARDS

Section 53A of the Act of 2010 provides definitions for the purposes of interpretation of Part 3A.

Section 53B of the Act of 2010 provides that a person performing a pre-approval controlled function has inherent responsibility for certain obligations specified by the Central Bank in relation to that function in regulations made under section 48(2)(ba) of the Act of 2013; and has allocated responsibility for certain obligations allocated under arrangements adopted in accordance with regulations made under section 48(2)(bc) of the Act of 2013. A person performing a pre-approval controlled function shall take any steps that are reasonable in the circumstances to secure that a contravention of the obligations for which the person has inherent or allocated responsibility does not occur or continue during the period for which the person has that responsibility.

Section 53C of the Act of 2010 provides that a person performing a controlled function shall take any steps as are reasonable in the circumstances to meet the common conduct standards; and that a person performing a pre-approval controlled function or any other function by which the person may exercise a significant influence on the conduct of the affairs of an RFSP shall take any steps that are reasonable in the circumstances in the performance of that function to meet the additional conduct standards.

Section 53D of the Act of 2010 provides that, in determining what circumstances are relevant for the purposes of assessing what are reasonable steps to ensure that the conduct standards are met and the duty of responsibility discharged, the Central Bank shall consider certain matters including and not limited to, the nature and scale of the business concerned; the function performed by the person concerned and that person's level of knowledge and experience; the existence and application of appropriate and effective systems; effective oversight of any delegation of responsibilities; appropriate and effective procedures for identifying and remedying problems; the extent to which these were within control or influence of the person and any guidelines published by the Bank in relation to the conduct standards.

Section 53E of the Act of 2010 details the Common Conduct Standards which shall apply to a person performing a controlled function in relation to an RFSP and, in respect of each of these standards, provides a non-exhaustive list of behaviours that would be expected to achieve compliance with the standard.

Section 53F of the Act of 2010 details the Additional Conduct Standards which shall apply to a person performing a pre-approval controlled function in relation to an RFSP, or any other function by which the person may exercise a significant influence on the conduct of the RFSP's affairs, in addition to the Common Conduct Standards.

Section 53G of the Act of 2010 provides that the Central Bank shall prepare and publish guidelines relating to the application and operation of Part 3A of that Act, and that a person performing a controlled function (including a pre-approval controlled function) shall have regard to such guidelines in the performance of that function.

Section 53H of the Act of 2010 provides that an RFSP shall notify persons performing controlled functions in relation to it of the respective conduct standards that apply to them and shall provide training to such persons to ensure that they have appropriate knowledge of those standards. It further provides that the Central Bank shall prepare and publish guidelines relating to these notification and training obligations of RFSPs.

Section 53I of the Act of 2010 provides that nothing in Part 3A of that Act requires a person produce a document, give information, or answer a question that the person could not have been compelled to do by a court.

PART 3

AMENDMENT OF PART 3 OF ACT OF 2010

Part 3 of the Bill will make a series of amendments to Part 3 of the Central Bank Reform Act 2010, which deals with the Central Bank's Fitness and Probity (F&P) Regime. These amendments will extend the F&P regime to certain categories of holding company and persons performing controlled functions in relation to them. They will also make changes to the operation of the F&P regime to make it more efficient and effective and to ensure that it conforms to the required standards of fairness in the administration of justice, in light of the decision of the Supreme Court in the case of *Zalewski v. An Adjudication Officer and Others* (2021).

The fitness and probity regime does not currently apply to directors or staff of holding companies, as they are unregulated entities. Holding companies do, however, come within the scope of some elements of the current regulatory framework, including requirements for the assessment of directors/staff of holding companies. The extension of the F&P regime to financial holding companies will make the regime available to the Central Bank as a supervisory and enforcement tool, where consistent with the discharge of its existing obligations, under EU law, in relation to holding companies.

RFSPs and holding companies will be required to certify that they are satisfied that each person performing a controlled function in relation to them is fit and proper.

The power of the Central Bank's Head of Financial Regulation to conduct an investigation in relation to the fitness and probity of a person performing a controlled function will be extended to apply to any person who performed a controlled function up to six years before the commencement of the investigation (subject to transitional provisions).

Where a person is suspended by the Head of Financial Regulation from performing a controlled function (or part of a controlled function) the maximum period of the suspension is extended to six months, and the period for which the suspension can be further extended by the High Court is extended to 24 months.

The decision by the Head of Financial Regulation to confirm a suspension notice will be appealable to the Irish Financial Services Appeals Tribunal (IFSAT).

Where a person is prohibited by the Central Bank or the Governor from performing a controlled function (or part of a controlled function), either for a specified period or indefinitely, the Bank or the Governor will be required to apply to the High Court for confirmation of the prohibition. This requirement will not apply where the Bank or the Governor enter into an agreement with the prohibited person whereby the person agrees to abide by the terms of the prohibition notice.

The Bill provides that the Central Bank or the Governor or the prohibited person can apply to the High Court for an order to vary or revoke a prohibition notice where there has been a relevant change in circumstances since the prohibition was confirmed.

The Bill introduces additional safeguards to ensure the independence of decision-makers in relation to the F&P process.

Extension of the scope of the Fitness and Probity regime to financial holding companies, mixed financial holding companies, insurance holding companies, and investment holding companies and to persons performing

controlled functions in relation to such holding companies is facilitated by amendments throughout this Part, by *sections 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 32, and 34*. In addition, the Part makes the following amendments.

Section 7 — Amendment of section 18 of Act of 2010 deletes provisions relating to the application of Part 3 of the Act to credit unions. These are now redundant as the application of Part 3 was extended to credit unions by the Central Bank Reform Act 2010 (Application of Part 3 to Credit Unions) Order 2012 [S.I. No. 378 of 2012].

Section 10 — Application of standards of fitness and probity provides that an RFSP or holding company shall not permit a person to perform a controlled function in relation to it unless it has certified that it is satisfied that the person complies with any standard of fitness and probity issued by the Central Bank under section 50; that the RFSP or holding company shall revoke such certification if it ceases to be so satisfied; and that the Bank may make regulations as to these matters and to the reporting to the Bank in relation to obligations under this section.

Section 12 — Amendment of section 23 of Act of 2010 clarifies that the information-gathering powers available to the Central Bank for the purposes of considering whether or not to approve a person for appointment to perform a pre-approval controlled function apply in relation to applicant firms which are not yet RFSPs.

Section 13 — Amendment of section 23A of Act of 2010 provides that a significant supervised entity (within the meaning of the Single Supervisory Mechanism (SSM) Framework Regulation) shall not appoint a person to perform a prescribed pre-approval controlled function in relation to it, unless the Central Bank of Ireland has notified the entity in writing that the European Central Bank (ECB) has approved the appointment; and that the Central Bank of Ireland may by regulations prescribe those pre-approval controlled functions approval of appointments to which is subject to the exclusive competence of the ECB under Article 4(1)(e) of the SSM Regulation.

Section 14 — Amendment of section 25 of Act of 2010 provides that the Head of Financial Regulation may conduct an investigation in relation to the fitness and probity of a person who has performed a controlled function after the commencement of this section and within the period of six years immediately preceding the commencement of the investigation.

Section 15 — Notice of Investigation amends the Act of 2010 by the insertion of a new section 25A to provide that as soon as practicable after a decision is made by the Head of Financial Regulation to conduct an investigation in relation to the fitness and probity of a person, he or she shall serve on the person notice in writing stating the reasons for holding the opinion that there is reason to suspect the person's fitness and probity to perform the relevant controlled function, including a copy of such material as the Head considers appropriate on which that opinion is based, and informing the person of his or her right to respond to the contents of the notice within a stated period of time; and that, if an investigation is discontinued, the Head shall serve on the person notice in writing of the discontinuation giving one or more reasons for the discontinuance.

Section 16 — Amendment of section 26 of Act of 2010 clarifies that a suspension notice cannot be served on a person in relation to whose fitness and probity an investigation is capable of being conducted only due to the fact that he or she has performed a controlled function within the period of

six years immediately preceding the commencement of the investigation; and deletes the provisions relating to the service of a suspension notice.

Section 19 — Amendment of section 29 of Act of 2010 clarifies that the Head of Financial Regulation can confirm a suspension notice where a function under Chapter 3 or 4 of the Act of 2010 is being carried out in relation to the suspended person, and not only where a fitness and probity investigation in relation to that person is ongoing; extends the period of validity of a suspension notice confirmed by the Head of Financial Regulation from three months to six months; and provides that a decision to confirm a suspension notice is appealable to IFSAT, which shall have particular regard to the need for expedition in the hearing of such an appeal.

Section 21 — Amendment of section 31 of Act of 2010 provides that the period for which the High Court may extend the validity of a suspension notice is increased from three months to six months and that further extensions of up to six months of the period of validity may be made by the Court subject to the limit that the period of validity shall not extend beyond 24 months from the end of the period of validity following confirmation by the Head of Financial Regulation (allowing for a total suspension period of 30 months from confirmation by the Head of Financial Regulation) or, where a prohibition is imposed on the suspended person, beyond the time when an application to the High Court for the confirmation of the prohibition notice has been disposed of.

Section 24 — Amendment of section 40 of Act of 2010 provides that, where the Head of Financial Regulation has certified to the Court the refusal or failure by a person to produce a document, provide information, or answer a question and the person concerned claims to be entitled to refuse on grounds of legal professional privilege, the Court may give directions as to the appointment of a suitable person to examine the material for which privilege is claimed and to prepare a report to assist the Court in deciding what action to take.

Section 25 — Head of Financial Regulation to prepare report provides for the matters to be considered by the Head of Financial Regulation before preparing a report of a Fitness and Probity investigation; and provides that the Head shall not make any recommendation, or express any opinion, in an investigation report, as to whether any prohibition (or, if so, what prohibition) should be imposed under section 43 if the Central Bank or the Governor forms the opinion that the person concerned is not of such fitness and probity as is appropriate.

Section 26 — Amendment of section 42 of Act of 2010 amends the definition of “prohibited person” as the existing definition is unduly limiting, and deletes the definition of “prohibition notice” which is no longer necessary.

Section 27 — Amendment of section 43 of Act of 2010 clarifies that a person may be prohibited from performing any and all controlled functions in relation to any and all RFSPs or holding companies; provides that any finding of fact made by the Central Bank or the Governor for the purpose of forming the opinion that the person concerned is not of such fitness and probity as is appropriate shall be made on the balance of probabilities; provides that, subject to section 46, a prohibition notice does not take effect unless confirmed by the High Court; and provides that, where the Bank or the Governor imposes a prohibition without an investigation, on the basis of indisputable facts, the Head of Financial Regulation is to be notified.

Section 28 — Repeal of section 44 of Act of 2010 repeals section 44 of the Act of 2010.

Section 29 — Amendment of section 45 of Act of 2010 provides that, as soon as practicable after the service of a prohibition notice, the Central Bank or the Governor shall, subject to section 46, apply to the High Court for confirmation of the notice.

Section 30 — Application to vary or revoke prohibition notice inserts a new section 45A in the Act of 2010 to provide that an application for an order varying or setting aside a prohibition notice confirmed under section 45 may be made to the High Court by the Central Bank, the Governor, or the prohibited person, and that if the Court is satisfied that, since the confirmation of the prohibition notice, there has been a change in circumstances such that a different decision would be taken in relation to the application for confirmation, the Court may make an order setting aside or varying the prohibition notice as it thinks fit, subject to the condition that the Court may not vary a prohibition notice in a way that would make it more onerous to the prohibited person.

Section 31 — Agreement for prohibition notice to have effect without confirmation provides that a prohibited person and any RFSP or holding company in relation to which the prohibited person was performing a controlled function at the time of the issue of the prohibition notice may agree in writing with the Central Bank or the Governor to comply with the prohibition notice for such period as is agreed; that, where such an agreement is entered into, the prohibition notice will not require to be confirmed by the High Court; that, where a party to such an agreement breaches the terms of the prohibition notice, the Head of Financial Regulation may apply *ex parte* to the Court for an order directing that party to comply with the notice; and that, if the Bank or the Governor, as the case may be, considers that there is no further need to continue the prohibition notice, the agreement may be terminated by written notice to the other parties.

Section 33 — Service of notices and other documents inserts a new section 49A in the Act of 2010 to provide that for the purposes of the giving or service of notices or other documents under Part 3 of the Act, section 61G of the Act of 1942 applies as if references to the Central Bank included references to the Governor and the Head of Financial Regulation.

Section 35 — Amendment of section 52 of Act of 2010 provides that the function of conducting a fitness and probity investigation, or any function for or in connection with the conducting of such an investigation, is not performed by the person who formed the opinion, that there is reason to suspect the person's fitness and probity to perform the relevant controlled function, on the basis of which the investigation was commenced; that any function in relation to the confirmation of a suspension notice by the Head of Financial Regulation is not performed by a person who performed a function in relation to the issue of the suspension notice; that any function in relation to the imposition of a prohibition, following a fitness and probity investigation, is not performed by a person involved in that investigation; and that the section does not prevent the person who formed the opinion, that there is reason to suspect the person's fitness and probity to perform the relevant controlled function, from exercising functions, of management, advice, or otherwise, that do not affect the independence of the investigation.

Section 36 — Independence of decision-makers inserts a new section 52A in the Act of 2010 to provide that the Central Bank shall not rely on any contract, including a contract of employment, with a person exercising the functions of deciding to issue or confirm a suspension notice or to impose a prohibition, in any respect that may affect the person's independence in the exercise of that function. The persons exercising these functions will be appointed from a panel established pursuant to Part IIID of the Act of 1942

(inserted by *section 69*). These will include members of the Bank’s staff, and external persons who will be paid by the Bank to exercise the functions concerned. The standards of fairness in the administration of justice required in light of the decision of the Supreme Court in the case of *Zalewski v. An Adjudication Officer and Others* (2021) require that the independence of decision-makers *vis-à-vis* the Bank be adequately safeguarded.

PART 4

AMENDMENT OF ACT OF 1942

Part 4 of the Bill will make a series of amendments to the Central Bank Act 1942, in particular to Part IIIC of that Act which deals with the Central Bank’s Administrative Sanctions Procedure (ASP). These amendments will make changes to the operation of the ASP to clarify the processes involved, and to ensure that it conforms to the required standards of fairness in the administration of justice, in light of the decision of the Supreme Court in the case of *Zalewski v. An Adjudication Officer and Others* (2021).

Chapter 1 — Amendment of Part IIIC of Act of 1942 — Sections 37 to 68

A number of the changes to Part IIIC are necessary to break the “participation link”. This breaking of the “participation link” will facilitate individual accountability.

The Bill makes changes to the procedures of an inquiry conducted by the Central Bank to determine whether someone committed or participated in a prescribed contravention. These include changes allowing the admission of documentary evidence, allowing the Bank to publish transcripts of inquiry proceedings, and protecting the confidentiality of material that may be disclosed in the course of an inquiry.

The Bill makes changes to the requirements for confirmation by the High Court of a decision of the Central Bank to impose a sanction following an inquiry. Every such decision or, where the decision is appealed, any decision of IFSAT in relation to such a decision, requires to be confirmed by the High Court before taking effect. The High Court shall confirm such a decision unless there was a manifest and fundamental error of law or the sanction is manifestly disproportionate.

The Bill introduces additional safeguards to ensure the independence of decision-makers in relation to the operation of the ASP.

A new Chapter 4 is inserted into Part IIIC to provide that proceedings of an investigation or inquiry under that Part shall be absolutely privileged, and to facilitate the service of documents for the purposes of that Part.

Section 37 — Amendment of section 33AN of Act of 1942 inserts additional definitions for the purposes of interpretation of Part IIIC of the Act and provides that, for the purposes of Part IIIC, a person is concerned in the management of a body corporate or other entity if the person is in any way involved in directing, managing or administering the affairs of the body or other entity.

Sections 38, 39, 40, and 41 amend sections 33ANC, 33ANE, 33ANF, and 33ANG respectively of the Act of 1942 to facilitate the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.

Section 42 — Application of Part to holding companies under Part 3 of Central Bank Reform Act 2010 inserts a new section 33ANH in the Act of 1942 to provide that Part IIIC of the Act applies in relation to the commission or suspected commission by a holding company of a

contravention of a provision of Part 3 of the Central Bank Reform Act 2010, of a direction given to, or a requirement imposed on, such a holding company under that Part, or of any obligation imposed on such a holding company by Part IIIC of the Act of 1942, or imposed by the Bank pursuant to a power exercised under that Part; and that Part IIIC of the Act applies in relation to participation by a person, while concerned in the management of such a holding company, in the commission by the holding company of such a contravention.

Section 43 — Amendment of Chapter 2 of Part IIIC of Act of 1942 inserts new sections 33ANI, 33ANJ, 33ANK in the Act of 1942.

Section 33ANI of the Act of 1942 provides definitions for the purposes of interpretation of Chapter 2 of Part IIIC.

Section 33ANJ of the Act of 1942 provides for the procedures that are to be followed to ensure that the subject of an investigation is kept adequately informed of the status of the investigation.

Section 33ANK of the Act of 1942 provides for the preparation of a report of an investigation and for the right of the investigation subject to make submissions on the draft report; that neither the draft report nor the final report shall include any recommendation or opinion as to whether a sanction (or what sanction) should be imposed; that the draft and final reports shall include any material that in the opinion of the authorised officer is relevant to the consideration of the report by the Central Bank for the purposes of deciding whether to hold an inquiry; that a person who receives a final report or any submissions on a draft report shall not disclose their existence or content other than for the purposes of obtaining legal advice; and that any person who does so disclose shall commit an offence.

Section 44 — Bank may hold inquiry into suspected commission of or participation in prescribed contravention amends section 33AO of the Act of 1942 to provide that whenever the Central Bank, after considering the final report of an investigation, and any submissions made by the subject of the investigation, suspects on reasonable grounds that the person is committing or participating in, or has committed or participated in, a prescribed contravention, it may hold an inquiry to determine the matter.

Section 45 — Notice of inquiry, submissions, attendance and adjournment amends section 33AP of the Act of 1942 to provide that, before holding an inquiry under section 33AO, the Central Bank shall give notice in writing to the person concerned of the grounds on which the Bank's suspicions are based, the date, time, and place, at which the inquiry will be held, and invite the person either to attend the inquiry or make written submissions to it; that a person concerned may lodge with the Bank any written submissions that the person wishes the Bank to take account of; that the Bank may adjourn an inquiry provided it ensures that the person concerned is notified of the date, time, and place, at which the inquiry will resume; and that the Bank may proceed with an inquiry in the absence of the person concerned so long as that person has been given an opportunity to attend the inquiry or to make written submissions to it.

Section 46 — Amendment of section 33AQ of Act of 1942 provides that, at the conclusion of an inquiry to determine whether a person is committing or participating in, or has committed or participated in, a prescribed contravention, the Central Bank shall make a finding as to whether, on the balance of probabilities, the person is committing or participating in, or has committed or participated in, the contravention; that the Bank shall have regard to all relevant matters, including the final investigation report, any submissions provided with the report, and any evidence adduced or

submissions made during the inquiry; that a notification of the Bank's decision at the conclusion of an inquiry shall state that the inquiry subject may appeal against the finding, and any decision to impose a sanction, to IFSAT; and it facilitates the breaking of the "participation link" by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.

Section 47 — Alternative procedure when commission of or participation in prescribed contravention is acknowledged amends section 33AR of the Act of 1942 to provide that the Central Bank if, after considering the final report of an investigation and any submissions provided with the report, it suspects on reasonable grounds that a person is committing or participating in, or has committed or participated in, a prescribed contravention, and the person acknowledges the commission of or participation in the contravention, it may, with the consent of the person, dispense with an inquiry and impose on the person any sanction that it could impose following an inquiry, or hold an inquiry to determine what sanction (if any) should be imposed on the person; that a sanction imposed, whether with or without the holding of an inquiry, does not have effect unless confirmed by the High Court; and that at the conclusion of an inquiry held to determine what sanction (if any) should be imposed, the Bank shall notify the person concerned of its decision, which shall set out the sanctions (if any) imposed.

Section 48 — Considerations relevant to imposition of sanctions amends the Act of 1942 by the insertion of a new section 33ARA to provide that the Central Bank, in determining whether to impose a sanction, what sanction to impose, or the level of any monetary penalty to be imposed, shall have regard to any relevant considerations including any consideration affecting the seriousness of the prescribed contravention concerned, the effect of the prescribed contravention, the conduct of the person during and after the commission of or participation in the prescribed contravention, the previous record of the person, any consideration relating to pending or possible criminal proceedings, including whether such proceedings may be prejudiced by the imposition of a sanction, and any matter relevant to the financial position of the person.

Sections 49 and 50 amend sections 33AS and 33AT respectively of the Act of 1942 to facilitate the breaking of the "participation link" by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.

Section 51 — Observance of directions imposing disqualification or conditions amends section 33AU of the Act of 1942 to provide that an RFSP shall ensure that a person is not permitted to perform a controlled function in relation to it if that would contravene a direction disqualifying the person from performing such a function.

Section 52 — Amendment of section 33AV of Act of 1942 provides that where the Central Bank suspects on reasonable grounds that a person is committing or participating in, or has committed or participated in, a prescribed contravention, it may enter into an agreement to resolve the matter without any acknowledgement by the person of the commission of or participation in the prescribed contravention. There is no requirement that any sanctions imposed under an agreement entered into pursuant to section 33AV of the Act of 1942 be confirmed by the High Court.

Section 53 — Appeal, confirmation and taking effect of decisions under this Part amends section 33AW of the Act of 1942 to provide that a finding of the Central Bank as to whether a person is committing or participating

in, or has committed or participated in, a prescribed contravention, or a decision of the Bank to impose a sanction following an inquiry, may be appealed, on certain grounds, to IFSAT; to amend the requirements for confirmation by the High Court of a decision of the Bank to impose a sanction following an inquiry such that every such decision, or any decision of IFSAT in relation to such a decision, requires to be confirmed by the High Court before taking effect; that the High Court shall confirm such a decision unless there was a manifest and fundamental error of law or the sanction is manifestly disproportionate; and that, where the Court does not confirm such a decision, it may substitute any appropriate decision that the Bank or IFSAT could have lawfully made or remit the matter for reconsideration to the Bank or IFSAT, as the case may be.

Section 54 — Confirmation of sanctions imposed by consent amends the Act of 1942 by the insertion of a new section 33AWA to provide that where the Central Bank imposes a sanction with the consent of a person who has admitted to the commission of, or participation in, a prescribed contravention, the Bank shall apply to the High Court for confirmation of the sanction; that the Court shall confirm the sanction unless it is manifestly disproportionate; and that where the Court does not confirm the sanction, it shall remit the matter for reconsideration by the parties.

Section 55 — Repeal of section 33AX of Act of 1942 repeals section 33AX of the Act of 1942. Section 33AX provides that a decision at the conclusion of an inquiry is appealable to IFSAT. This will be provided for by the new provisions relating to appeals and court confirmation in section 33AW of the Act of 1942, as amended by *section 54*.

Section 56 — Interpretation (Chapter 3) inserts a new section 33AXA in Chapter 3 of Part IIIC of the Act of 1942 to provide definitions for the purpose of the interpretation of that chapter.

Section 57 — Amendment of section 33AY of Act of 1942 provides that at an inquiry the functions of the Central Bank include the making of submissions, leading of evidence, and examination of witnesses on behalf of the Bank, and any other function required for conducting the inquiry; and that, for the purpose of performing any of those functions, the Bank may be assisted by a legal practitioner.

Section 58 — Amendment of section 33AZ of Act of 1942 provides that the Central Bank may publish a transcript of all or part of the proceedings of an inquiry.

Section 59 — Power to order information about proceedings not to be disclosed inserts a new section 33AZA in the Act of 1942 to provide that the person presiding at an inquiry may order that specified information relating to specified proceedings before the inquiry, so far as it is held in public, shall not be disclosed; and that a person who contravenes such an order shall be guilty of an offence.

Section 60 — Confidential information not to be disclosed inserts a new section 33AZB in the Act of 1942 to provide that where confidential information is provided to a person for the purposes of an inquiry, that person shall not disclose that information (other than to his or her legal representative) unless authorised to do so by the Central Bank or required to do so by law; and that a person who discloses such confidential information shall be guilty of an offence.

Section 61 — Amendment of section 33BA of Act of 1942 provides that, where a person engages in obstructive behaviour at an inquiry, the Central Bank may apply to the Court for an order requiring the person to

comply with any request or requirement under the Act and not to repeat the obstructive behaviour.

Section 62 — Documentary Evidence inserts a new section 33BAA in the Act of 1942 to provide that information contained in a document shall be admissible in an inquiry as evidence of any fact in the document of which direct oral evidence would be admissible; that the party proposing to give such documentary evidence shall serve notice to that effect on each of the other parties to the proceedings; and that if any other party to the proceedings objects to the admission of the documentary evidence, the person presiding at the inquiry shall decide the matter in the interests of justice.

Section 63 — Amendment of section 33BB of Act of 1942 makes minor textual changes to that section.

Section 64 — Amendment of section 33BC of Act of 1942 facilitates the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP; and provides that, if the Central Bank has entered into a settlement agreement, it may publish particulars of the agreement subject to considerations of professional secrecy, confidentiality and/or unfair prejudice to a person’s reputation.

Section 65 — Amendment of section 33BD of Act of 1942 provides that the Central Bank may prescribe guidelines in relation to the determination of appropriate sanctions and monetary penalties to be imposed under Part IIIC of the Act.

Section 66 — Amendment of section 33BE of Act of 1942 provides that certain functions in relation to an inquiry are restricted to ensure that the same person does not perform functions or exercise powers of the Central Bank such as could result in unfairness to any person concerned; and that the inquiry members shall be appointed by the Bank from a panel established by the Minister.

Section 67 — Limitation of judicial review amends section 33BF of the Act of 1942 to provide that leave shall not be granted for judicial review of a finding made at the conclusion of an inquiry as to whether a person is committing or participating in, or has committed or participated in, a prescribed contravention, or of a decision to impose a sanction at the conclusion of an inquiry.

Section 68 — amends Part IIIC of the Act of 1942 by inserting Chapter 4 into the Part after Chapter 3.

CHAPTER 4

Supplementary

Documents privileged for purposes of law of defamation

Section 33BG of the Act of 1942 provides that proceedings of an investigation or inquiry under Part IIIC shall be absolutely privileged.

Service of documents

Section 33BH of the Act of 1942 provides that the provisions relating to the service of documents in section 61G and in any regulations made under that section apply for the purposes of Part IIIC as if references to the Central Bank included references to an authorised officer.

Chapter 2 — Establishment of panel — Section 69

This Chapter provides for the establishment of a panel from which decision-makers for ASP inquiries and other purposes may be appointed by the Central Bank. The members of this panel will be appointed by the Minister for Finance who must be satisfied, following consultation with the Bank, that the persons appointed have the skill, experience, and knowledge necessary to perform the functions that they may be appointed to perform.

Section 69 amends the Act of 1942 by inserting Part IIID after Part IIIC.

PART IIID

PANEL FOR PURPOSES OF CERTAIN DECISIONS

Section 33BI of the Act of 1942 provides that the Minister may establish a panel from which persons may be appointed as members of inquiries or for other purposes requiring an independent decision-maker to act on behalf of the Central Bank; that appointments to such a panel shall be made following a process conducted by the Bank in consultation with the Minister; that a person shall not be appointed to such a panel unless the Minister is satisfied, after consulting with the Bank, that the person has the skill, experience, and knowledge necessary to perform the functions that the person may be appointed to perform; and that the Bank shall ensure the independence of any member of such a panel.

Chapter 3 — Amendment of Part VIIA of Act of 1942 — Sections 70 to 73

This Chapter makes amendments to Part VIIA of the Central Bank Act 1942, which deals with the Irish Financial Services Appeals Tribunal (IFSAT) and appeals to that Tribunal. The amendments facilitate the changes to the appeals and court confirmation processes in Part IIIC.

Section 70 — Amendment of section 57R of Act of 1942 deletes the provisions relating to appeals to IFSAT that are superseded by the provisions of this Bill relating to such appeals.

Section 71 — Repeal of section 57S of Act of 1942 repeals section 57S of the Act of 1942.

Section 72 — Amendment of section 57Z of Act of 1942 to provide that, after hearing an appeal against a decision to impose a suspension or a prohibition under the Act of 2010, IFSAT may remit the matter for reconsideration by the Central Bank, together with any recommendation or direction of the Appeals Tribunal as to what aspects of the matter should be reconsidered, and set aside the decision.

Section 73 — Amendment of section 57AC of Act of 1942 provides that the provisions relating to the effect of a decision of IFSAT are subject to section 33AW of the Act of 1942.

Chapter 4 — Miscellaneous amendments to Act of 1942 — Sections 74 to 79

Section 74 — Amendment of section 2 of Act of 1942 facilitates the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.

Section 75 — Amendment of section 33AK of Act of 1942 provides that the confidential information to which section 33AK applies includes not only information the disclosure of which is directly prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts, but also information the disclosure of which is required to be prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts.

Section 76 — Amendment of section 34 of Act of 1942 substitutes the correct reference to Schedule 4.

Section 77 — Amendment of section 57G of Act of 1942 deletes subsection (1A) as it is obsolete.

Section 78 — Amendment of section 61G of Act of 1942 deletes an obsolete reference to the Irish Financial Services Regulatory Authority, which was abolished by the Act of 2010.

Section 79 — Amendment of Schedule 2 to Act of 1942 updates the designated enactments in light of amendments made by this Bill. Sections 33AU, 33AZA, and 33AZB of the Act of 1942 and Parts 2A and 3A of the Act of 2010 are added to the designated enactments rendering a breach of any of these a prescribed contravention.

PART 5

PRIVILEGED LEGAL MATERIAL

Part 5 of the Bill will make amendments to the Central Bank (Supervision and Enforcement) Act 2013 in relation to the treatment of privileged legal material. These provide for a process whereby a person may agree to provide privileged material to the Central Bank for specific purposes without waiving the privilege to any other party. This process will provide a legally robust and clear mechanism to facilitate this limited disclosure to the Central Bank should a person voluntarily wish to disclose legally privileged material for the purposes of the performance of the Central Bank's functions under financial services legislation, and should the Central Bank agree to such disclosure. It will remove any doubt in relation to the status of the material following disclosure, and insulate it from any potential litigation and disclosure requests by third parties. Information disclosed under such an agreement will not be releasable under the Freedom of Information Act 2014.

Section 80 — Repeal of section 33 of Act of 2013 repeals section 33 of the Act of 2013, which provides a mechanism to apply to the court for a determination where the privilege status of material is disputed. This will be replaced by the new section 34B.

Section 81 — Amendment of section 34 of Act of 2013 provides that information acquired by the Central Bank under a disclosure agreement under section 34A of the 2013 Act may not be used for a purpose other than the purposes specified in the agreement.

Section 82 amends the Act of 2013 by inserting Part 3A after Part 3.

PART 3A

VOLUNTARY DISCLOSURE OF PRIVILEGED LEGAL MATERIAL

Voluntary disclosure of privileged legal material

Section 34A of the Act of 2013 provides that the Central Bank may enter into a disclosure agreement with a person entitled to waive legal professional privilege, under which the person agrees to produce or give access to the material, to the Bank and any specified person, for purposes specified in the agreement; that section 33AK of the 1942 Act applies to disclosed material as it applies to confidential information; that the agreement does not constitute a waiver of privilege in any material not covered by the agreement or to any person other than the Bank or any person specified in the agreement; that the material is disclosed only for the purposes specified in the agreement; and that the material disclosed is not subject to the Freedom of Information Act 2014.

Section 34B of the Act of 2013 provides that if a person refuses to provide information to the Central Bank on the grounds that it contains privileged legal material, the Bank may apply to the Court for a determination as to whether the information is, in fact, privileged.

PART 6

MISCELLANEOUS AMENDMENTS

Section 83 — Amendment of section 3 of Act of 2010 amends an existing definition.

Section 84 — Amendment of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 facilitates the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.

Section 85 — Amendment of section 21 of Act of 2013 provides that Part 3 of that Act applies to all holding companies to which Part 3 of the Act of 2010 applies for the purposes of Part 3 of the 2010 Act.

Section 86 — Amendment of section 22 of Act of 2013 provides that the Central Bank’s information-gathering powers apply to holding companies to which Part 3 of the Act of 2010 applies for the purposes of that Part.

Section 87 — Amendment of section 24 of Act of 2013 provides that authorised officers may exercise the powers conferred by Chapter 3 of Part 3 of the Act of 2013 in relation to holding companies for the purposes of Part 3 of the 2010 Act.

PART 7

SAVINGS AND TRANSITIONAL PROVISIONS

Section 88 — Interpretation: Part 7 provides that any word or expression in this Part has the same meaning as in Part IIIC of the 1942 Act.

Section 89 — Investigations under Part 3 of Act of 2010 provides that a Fitness and Probity investigation which has been commenced before the commencement of *section 15* shall not be affected by any amendment in *Part 3* of the Bill.

Section 90 — Prohibition notices under section 43 of Act of 2010 provides that the amendments made by *section 27* shall apply to prohibition notices that have been issued on the date of commencement of that section but which have not, by that date, taken effect.

Section 91 — Investigations under Part IIIC of the Act of 1942 provides that an investigation under Part IIIC of the Act of 1942 which has been commenced before the commencement of *section 43* shall be affected by the amendments in *Part 4* of the Bill except that the provisions relating to investigation notices shall not apply; and for the interpretation of references in *section 33AO* of the Act of 1942, as substituted by *section 44*, as they apply to an investigation completed before the commencement of *section 43*.

Section 92 — Inquiries under Part IIIC of Act of 1942 provides that an inquiry under Part IIIC of the Act of 1942, notice of which has been given before the commencement of a provision of *Part 4*, shall be affected by the amendments in *Part 4* of the Bill only to the extent that on and after the date of commencement of *section 53*, *section 33AW* of the Act of 1942, as substituted, applies in relation to any inquiry decision which has been made but has not taken effect before that date; and that any inquiry decision

which has taken effect before that date shall be subject to the provisions of the Act of 1942 as if *sections 53, 55, 70, 71, 72, and 73* had not been commenced.

Section 93 — Application of Part IIIC of Act of 1942 to participation in pre-commencement contraventions provides that, in relation to an inquiry into participation in the commission of a prescribed contravention committed before the date of commencement of *section 44*, a reference to performing a controlled function in relation to an RFSP is to be read as a reference to being concerned in the management of the RFSP.

Section 94 — Application of section 33BI of Act of 1942 to existing panel provides for the designation by the Minister of an existing panel to be treated as the panel for the purposes of section 33BI of the Act of 1942, and confirms the terms of appointment of the members of that existing panel.

Section 95 — Section 33 of Act of 2013 provides that the repeal of section 33 of the Act of 2013 does not affect any application made or other thing done under that section before the date of commencement of *section 80*.

An Roinn Airgeadais,
Iúil, 2022.