An Bille um Chumhacht Forghabhála (Urrúis agus Láimhseáil Earraí Lonnaíochta), 2025

Occupying Power (Securities and Handling of Settlement Goods) Bill 2025

Meabhrán Míniúcháin

Explanatory Memorandum

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EXPLANATORY MEMORANDUM

Purpose of Bill

This Bill contains provisions which are intended to supplement rather than to replace the provisions of the Control of Economic Activity (Occupied Territories) Bill 2018, which has passed Seanad Éireann and is currently before the Dáil. The provisions of this Bill are intended to apply generally, but the situation in Israel and the Occupied Palestinian Territories is the immediately relevant context.

Central to both Bills are the obligations of the State in international law, with particular regard to the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

Ireland recognises the State of Israel and maintains diplomatic relations with it. However, Ireland considers that Israel has, since June 1967, and as a matter of international law, occupied territory outside its borders illegally, including the West Bank of the River Jordan, the Gaza Strip and East Jerusalem (the “Occupied Territories”). Ireland recognises the borders of Israel as they stood before 1967, and it also believes both the Israeli civilian settlements within the Occupied Territories and the associated economic activity to be unauthorised and unlawful.

Ireland’s position accords with that of the international community. Indeed, UN Security Council Resolution 2334(2016) of 23 December 2016 calls on all UN members to distinguish between the territory of the State of Israel and the territories it has occupied since 1967.

On 30 December 2022, the General Assembly of the United Nations requested the International Court of Justice to provide an advisory opinion on the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination and from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967.

In its advisory opinion the ICJ confirmed that: “all states are under an obligation not to recognise as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory.”. The purpose of this Bill is to enable additional and partial discharge of the legal obligation referred to by the ICJ.

Provisions of Bill

The Bill is by its long title an Act to provide that the Central Bank shall not approve a prospectus for securities issued by or on behalf of a state that is an occupying power; to provide for the purposes of the Unfair Dismissals Acts 1977 to 2015 that a dismissal of an employee shall be deemed unfair where it arises from a refusal to handle goods associated with the activities of an occupying power within occupied territory; and to provide for related matters.

Section 1 deals with interpretation of terms used in the Bill. The term “occupied territory” is defined as meaning a territory which has been held, in a decision or advisory opinion of the International Court of Justice or in a decision of the International Criminal Court, to be occupied territory within the meaning of the Fourth Geneva Convention and “occupying power”, in relation to occupied territory, has the same meaning as it has in the Convention.

Section 2 deals with securities issued by or on behalf of a state that is an occupying power. The EU’s Prospectus Regulation ((EU) 2017/1129) governs the prospectus that must be published when securities are offered to the public or admitted to trading on a regulated market in the Union. A competent authority within one of the member states must approve the prospectus and, in Ireland, the competent authority is the Central Bank.

Before Brexit the UK’s competent authority approved the prospectus for Israeli government bonds. After the UK left, Ireland was chosen instead, so that the Central Bank became responsible for approving the prospectus for Israeli government bonds offered for sale in Europe. In recent times, websites promoting the sale of Israeli bonds have emphasised their role in supporting Israel during its current hostilities against Gaza, leading some to call them “war bonds”.

The Governor of the Central Bank has told the Oireachtas Finance Committee that the Bank itself has no discretion in the matter and that it could only refuse to approve a prospectus for the issue of Israeli bonds if there was a legal basis under either EU or national law. This section provides the legal basis. It provides that the Central Bank shall not approve a prospectus pursuant to the Prospectus Regulation that is issued by or on behalf of an occupying power. If the Bank has approved such a prospectus before the passing of the Bill into law, then it must revoke that approval.

It is again to be noted that a refusal to approve a prospectus does not arise from its being one for Israeli bonds but rather arises from the fact that the State of Israel is an occupying power.

Section 3 is headed “Refusal to handle, etc., settlement goods”. Settlement goods means goods produced in whole or in part within an occupied territory by a member of the civilian population of the occupying power, whose presence and activities within the occupied territory are facilitated by the occupying power.

With reference to Israel and the Occupied Palestinian Territories, both Ireland and the European Union as a whole are agreed that Israeli civilian settlements on occupied land are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible. As regards trade in goods between Israel and Ireland and other EU states, this is facilitated by an EU-Israel Association Agreement. Goods originating from Israeli settlements in the Occupied Territories are not eligible for preferential treatment under the Agreement, although their entry into the EU market is not at present prohibited.

This section recognises that an employee may have a conscientious objection to dealing in the course of his or her employment with goods sourced from illegal settlements. The section provides that a dismissal of an employee shall be deemed, for the purposes of the Unfair Dismissals Acts 1977 to 2015, to be an unfair dismissal if it results wholly or mainly from the refusal of an employee to engage in the course of his or her employment in the loading, handling, storage, carriage, custody, care, discharge, display, use or sale of settlement goods.

Section 4 provides for the short title of the Bill.

Duncan Smith, TD,
Iúil, 2025.