

DÁIL ÉIREANN

AN ROGHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

SELECT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND RE- FORM, AND TAOISEACH

Déardaoin, 10 Deireadh Fómhair 2019

Thursday, 10 October 2019

The Select Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

Pearse Doherty,	
Michael McGrath,	
Patrick O'Donovan (Minister of State at the Department of Finance).	

Teachta / Deputy Peter Burke sa Chathaoir / in the Chair.

Business of Select Committee

Acting Chairman (Deputy Peter Burke): With the agreement of the Members, I have been asked to chair this meeting in the absence of the Chairman, Deputy McGuinness. Is that agreed? Agreed.

I remind Members to ensure that their mobile phones are switched off. This is important as it causes serious problems for broadcasting, editorial and sound staff.

Apologies have been received from Deputy Paul Murphy.

Finance (Tax Appeals and Prospectus Regulation) Bill 2019: Committee Stage

Acting Chairman (Deputy Peter Burke): The Bill makes legislative provision concerning the Tax Appeals Commission and a new EU Prospectus Regulation. Members will recall that a joint committee conducted pre-legislative scrutiny of the Bill earlier in the year. Last June, the committee issued recommendations that I hope assisted in finalising the Bill before us.

I welcome the Minister of State at the Department of Finance and Public Expenditure and Reform, Deputy Patrick O'Donovan, to the meeting. Six amendments have been tabled for consideration, all of which have been submitted by the Minister.

SECTION 1

Acting Chairman (Deputy Peter Burke): Amendment No. 1 is in the name of the Minister. Amendments Nos. 1, 2, 5 and 6 are related and will be discussed together.

Minister of State at the Department of Finance (Deputy Patrick O'Donovan): I move amendment No. 1:

In page 5, line 15, to delete “, other than *Part 3*”.

I apologise on behalf of the Minister for Finance, Deputy Donohoe, and the Minister of State at the Department of Finance, Deputy Michael D'Arcy, who took the Bill to this Stage. They were unavailable this morning due to budgetary commitments.

This grouping covers all of the amendments to sections 1, 23 and 25. It was intended that the Bill would be enacted in advance of the Prospectus Regulation coming into force on 21 July 2019. As the commencement date originally set has passed, sections 1, 23 and 25 must be updated. Therefore, I propose the removal of the specific commencement order for Part 3 from section 1 of the Bill and to update references to the commencement of this Bill in sections 23 and 25 to take account of the changes made to section 1.

Amendment agreed to.

Deputy Patrick O'Donovan: I move amendment No. 2:

In page 5, to delete line 19.

Amendment agreed to.

Section 1, as amended, agreed to.

Sections 2 to 4, inclusive, agreed to.

SECTION 5

Question proposed: “That section 5 stand part of the Bill.”

Deputy Pearse Doherty: Section 5 refers to the appointment of a chairperson to the commission. The chairperson will have specific designated functions under law, including annual reports and so on. Section 5(4E) refers to the temporary incapacity of a chairperson. I presume this makes sense, given the statutory function that we assign to it, that if the chairperson is not available those functions will need to be carried out by “another Commissioner”, who will be appointed chairperson. I seek clarity on this matter as the legislation allows for one chairperson. Section 5(4E) states:

Where the chairperson is for any reason temporarily unable to act as chairperson, the Minister may appoint another Commissioner to be the chairperson for the duration of that inability and the Commissioner so appointed may, for that duration, perform all of the functions assigned to the chairperson.

The option may not be needed but this is an acting chairperson made into a chairperson. In this circumstance, we would legally have two chairpersons, on which I seek a clarification.

Deputy Patrick O’Donovan: I am sure that the Deputy will forgive me for the fact that the Minister and Minister of State who dealt with the legislation up to now are not present. I have checked with my officials accompanying me that it is the Minister who would make the decision and one of the other remaining commissioners would act up on a temporary basis.

Deputy Pearse Doherty: In terms of the Tax Appeals Commission we would have two chairpersons. Would it be a requirement that the other chairperson would have to stand down during a period of incapacity or would two chairpersons be appointed? Would there be a point at which there are two chairpersons, legally? The provision should only provide for an acting chairperson as opposed to a chairperson. I believe one can only have one chairperson at any point in time.

Deputy Patrick O’Donovan: I have checked and it would depend on the incapacity. Obviously the person would have to signal his or her intent to come back again. That would have to be notified to the Minister who would, again, reverse the decision. In other words, the temporary commissioner would then cease to be the temporary commissioner and the permanent chairperson would resume his or her office.

Deputy Pearse Doherty: In all circumstances when a chairperson is appointed under section (4E), it is due to the person being “temporarily unable to act as chairperson”. Does this require the original chairperson to stand down from that position for the duration of the temporary basis?

Deputy Patrick O’Donovan: The provision states that it is “for the duration of that inability”. So the chairperson would have to notify the Minister “for the duration” of his or her inability and would again have to notify the Minister of his or her ability to take up the role.

Deputy Pearse Doherty: Let us say I was a chairperson who had been appointed for a seven-year duration and I had to undergo treatment for a serious illness that required me to recover for a period of maybe six months or a year. As a result I would be unable to carry out some of the legal functions and a new person would be appointed. What would happen to me?

Would I be required, as the original chairperson, to step aside from my role as chairperson or does one legally have two chairpersons at that point in time? There is nothing in the Act to suggest that the original chairperson has to step aside. Section 5(4E) does not refer to an acting chairperson. We actually have a chairperson but one cannot have two chairpersons. If one had an acting chairperson then the chairperson who was unable, due to incapacity, would continue in his or her role but would not carry out any of the functions, which would be assigned to the acting chairperson. Section 5(4E) appoints a chairperson, which is exactly the role of the other person. Does the Minister of State understand what I am saying?

Deputy Patrick O’Donovan: Yes. We will seek clarification and, if necessary, the Minister will bring forward an amendment on Report Stage. The Deputy has raised a very legitimate point in terms of how the chairperson’s role ceases but the temporary chairperson commences, and then the temporary chairperson ceases and the chairperson recommences.

Deputy Pearse Doherty: I appreciate that the Minister will consider the matter and maybe return to it on Report Stage. I wish to highlight the fact that there would be issues concerning remuneration and entitlement. Also, I do not like the heading as the provision refers to incapacity. The text is probably better but not, in my view, completely acceptable either because the heading is “Temporary Incapacity of Chairperson”. Also, it states, “where the chairperson is for any reason temporarily unable” as opposed to unavailable.

Let us say a chairperson was on maternity leave for a period of six months and, therefore, was unable to carry out the functions or the statutory functions assigned to the chairperson. A new chairperson or acting chairperson would be more appropriate language and he or she would be assigned to carry out those functions. It is not a case that a chairperson is unable; it is that he or she is unavailable. I ask that the Minister and his officials look at the section for Report Stage.

Deputy Patrick O’Donovan: I accept the point that the Deputy has made and we will revert to it on Report Stage.

Deputy Pearse Doherty: I thank the Minister of State.

Question put and agreed to.

Sections 6 to 15, inclusive, agreed to.

NEW SECTIONS

Acting Chairman (Deputy Peter Burke): Acceptance of amendment No. 3 involves the deletion of section 16 of the Bill.

Deputy Patrick O’Donovan: I move amendment No. 3:

In page 15, between lines 3 and 4, to insert the following:

“Amendment of section 1349 of Act of 2014

16. Section 1349(1) of the Act of 2014 is amended—

- (a) in subparagraph (vi), by the substitution of “time.” for “time;”, and
- (b) by the deletion of subparagraphs (vii) and (viii).”.

This grouping involves removing the word “promoter” and “anyone who has authorised the issue of a prospectus” other than the Central Bank of Ireland from the list of persons deemed liable in section 1349(1) of the Companies Act. This is required in order to align with the equivalent list of persons deemed responsible under the Prospectus Regulation transposed by way of a statutory instrument of 19 July 2019. As a consequence of this alignment I propose the removal of section 1350 subsection (1A) of the Companies Act, which is no longer required and is a technical amendment.

Amendment agreed to.

Section 16 deleted.

Acting Chairman (Deputy Peter Burke): Acceptance of amendment No. 4 involves the deletion of section 17 of the Bill.

Deputy Patrick O’Donovan: I move amendment No. 4:

In page 15, between lines 6 and 7, to insert the following:

“Amendment of section 1350 of Act of 2014

17. Section 1350 of the Act of 2014 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) A person shall not be liable under section 1349 solely on the basis of a summary of a prospectus or the specific summary of an EU Growth Prospectus (including a translation of either such summary), unless—

(a) it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus, or

(b) it does not provide, when read together with other parts of the prospectus, key information in order to aid investors when determining whether to invest in the securities concerned.”,

and

(b) by the deletion of subsection (1A).”.

Amendment agreed to.

Section 17 deleted.

Sections 18 to 22, inclusive, agreed to.

NEW SECTION

Acting Chairman (Deputy Peter Burke): Acceptance of amendment No. 3 involves the deletion of section 16 of the Bill.

Deputy Patrick O’Donovan: I move amendment No. 5:

In page 18, between lines 11 and 12, to insert the following:

“Amendment of section 1364 of Act of 2014

23. The Act of 2014 is amended by the substitution of the following section for section 1364:

“Certain agreements void

1364. (1) A condition—

(a) requiring or binding an applicant for securities to waive compliance with any requirement of—

(i) this Chapter,

(ii) Irish prospectus law,

(iii) Irish prospectus law, within the meaning of this Chapter as it stood on the relevant date,

(iv) EU prospectus law, or

(v) EU prospectus law, within the meaning of this Chapter as it stood on the relevant date,

or

(b) purporting to affect an applicant for securities with notice of any contract, document or matter not specifically referred to in the prospectus concerned where—

(i) EU prospectus law, or

(ii) EU prospectus law, within the meaning of this Chapter as it stood on the relevant date,

applies,

shall be void.

(2) In this section, ‘relevant date’ means the date on which *section 23* of the Finance (Tax Appeals and Prospectus Regulation) Act 2019 comes into operation.”.”.

Section 17 gives effect to Article 11(2) of the EU Prospectus Regulation which exempts a person from the civil liability based solely on the summary of a prospectus unless it is misleading, inaccurate or inconsistent or omits key information when read together with other parts of the prospectus. I seek to give effect to the provision of the regulation.

Amendment agreed to.

Section 23 deleted.

Section 24 agreed to.

SECTION 25

Deputy Patrick O’Donovan: I move amendment No. 6:

In page 19, line 10, to delete “21 July 2019” and substitute “the date on which those

10 October 2019

provisions come into operation”.

Amendment agreed to.

Section 25, as amended, agreed to.

Title agreed to.

Bill reported with amendments.

Message to Dáil.

Acting Chairman (Deputy Peter Burke): In accordance with Standing Order 90, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has completed its consideration of the Finance (Tax Appeals and Prospectus Regulation) Bill 2019 and has made amendments thereto.

The select committee adjourned at 10.25 a.m. sine die.